BOARD OF ZONING APPEALS OF THE TOWN OF WARRENTON
TOWN HALL
21 MAIN STREET
WARRENTON, VIRGINIA 20186

MINUTES

A REGULAR MEETING OF THE BOARD OF ZONING APPEALS WAS HELD ON FEBRUARY 03, 2026, AT 5:00 P.M. IN WARRENTON, VIRGINIA

PRESENT — Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin; Ms. Heather Jenkins, Zoning Administrator; Ms. Amber Heflin, Zoning Official; Mr. Matthew Crist, Esquire

ABSENT

CALL TO ORDER AND DETERMINATION OF A QUORUM

The meeting was called to order at 5:00pm. There was a quorum of members present.

APPROVAL OF MINUTES

Draft Minutes – January 6, 2026

Mr. Mulliss moved to approve the January 6, 2026, minutes as presented.
Ms. Helander seconded. All in favor. The vote was as follows:

Ayes: ***Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin***
Nays:
Absent During Vote:

Draft Minutes – January 20, 2026

Mr. Mulliss moved to approve the January 20, 2026, minutes as presented.
Ms. Helander seconded. All in favor. The vote was as follows:

DRAFT

Ayes: ***Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin***

Nays:

Absent During Vote:

PUBLIC MEETING

Mr. Baggett recused himself from hearing case BZA-25-3 due to a conflict of interest and exited the chambers until the conclusion of all discussion for the item.

BZA-25-3- Appeal of a Zoning Administrator's Determination

Application for an Appeal pursuant Article 11-3.12 of the Town of Warrenton 2006 Zoning Ordinance, of a Zoning Determination made by the Zoning Administrator rendered on October 24, 2025, as to any alleged vested rights obtained under SUP-22-3 and approved SDP-23-6 related to the construction of a data center on property located at 719 Blackwell Road.

Ms. Maybach briefly introduced the application and looked to staff for direction.

Ms. Heflin briefly outlined the rules of procedure and introduced the Town's Attorney, Mr. Chap Petersen. Ms. Heflin advised the Board that Mr. Petersen would have approximately 20 minutes for his presentation.

Mr. Petersen provided a presentation to the Board of Zoning Appeals regarding the appeal.

Mr. Petersen concluded his presentation, stating the Zoning Administrator's determination is presumed correct under Virginia State Code Section §15.2-2309(1).

Mr. Crist asked if the Zoning Administrator's Determination as outlined in section 2309 of the Virginia code is rebuttable.

Mr. Petersen responded, outlining the conditions for rebuttal.

Mr. Crist asks if the 90-day response time is mandatory or if it can be deferred.

Mr. Petersen responded, stating that deferral is an option.

Mr. Crist asked for further clarification.

Mr. Petersen responded, reiterating his statement with further clarification.

Ms. Scullin asked if Amazon violated the consent order by filing the appeal.

Mr. Petersen stated that in his opinion they did.

Ms. Heflin introduced the appellant's representative, Mr. Gordon Todd, indicating he was also afforded a 20-minute presentation.

DRAFT

Mr. Todd presented their argument on behalf of Amazon Data Services, to the Board.

Mr. Crist asked why the acts Amazon is relying on wouldn't be suspended for the purposes of the ongoing court case.

Mr. Todd indicated he does not understand the question.

Mr. Crist clarified his question and provided examples.

Mr. Todd clarified and outlined the appellants reasoning.

Mr. Crist restated and clarified his point and interpretation of the related Virginia Code.

Mr. Todd presented his further arguments for the appellants' position in seeking a determination.

Ms. Maybach asked Mr. Crist about speakers' time limits.

Mr. Crist responded indicating that it is the Boards purview.

Ms. Heflin provided additional clarification indicating that the Town has the opportunity for a rebuttal and that questioning could continue now or after wards.

Ms. Maybach indicated that Mr. Crist should continue with his questioning.

Mr. Crist asked for further clarification on the purpose of the request if it is not to further progress towards construction in violation of the consent order.

Mr. Todd responded, explaining their purpose to use the vested rights determination to remove risk as an advisory opinion authorized by statute.

Mr. Crist indicated his thoughts that the appellant is trying to progress the process towards the data center.

Mr. Todd responded, confirming that the appellants' actions are in pursuit of the data center and providing the reasons that the determination does not violate the consent order.

Mr. Crist acknowledged his understanding of the points and asked if no progress could be made without a determination.

Mr. Todd indicated that progress could still be made at risk using the prior zoning code, the vested rights determination removes the risk.

Mr. Crist indicated that he had no further questions.

Ms. Maybach invites Mr. Petersen forward for his rebuttal.

DRAFT

Mr. Petersen provided his rebuttal addressing the focus of the request and the nature of the ongoing court case.

Ms. Helander asked if the appellant was permitted a rebuttal.

Ms. Heflin responded, advising that rebuttal would only be permitted if new issues were presented.

Mr. Mulliss moved to convene in closed session at 6:00pm as permitted by Virginia Code § 2.2-3711 (A)(7), for consultation with legal counsel or briefing by staff members or consultants pertaining to the pending case of BZA-25-3, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Town.

Mr. Helander seconded. All in favor. The vote was as follows:

Ayes:	***Ms. Melea Maybach, Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin***
Nays:	
Recusal:	***Mr. Van Baggett, Vice Chair***

The Board returned from closed session and reconvened in open session at 6:15pm.

Ms. Helander moved that the Board certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information Act as cited in that motion.

Mr. Mulliss seconded. All in favor. The vote was as follows:

Ayes:	***Ms. Melea Maybach, Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin***
Nays:	
Recusal:	***Mr. Van Baggett, Vice Chair***

Mr. Crist spoke to the Board providing his recommendation and reasoning.

Ms. Maybach asked for any questions.

Mr. Mulliss moved to defer until after pending action of CL23-128 is concluded and all appeal periods have expired.

Ms. Helander seconded. All in favor. The vote was as follows:

Ayes:	***Ms. Melea Maybach, Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin***
Nays:	
Recusal:	***Mr. Van Baggett, Vice Chair***

Ms. Heflin made a minor correction to the voting tally, noting the Vice Chair's recusal. This was also affirmed by Ms. Maybach.

DRAFT

Ms. Heflin added that a citizen comment submitted by Mr. Michael Brady, Counsel for CFFC, would be included in the official approved minutes.

Mr. Baggett returned to chambers to participate in the remainder of the Board meeting.

UPDATES

2026 Board Meeting Schedule – Adoption

Ms. Heflin presented the proposed 2026 schedule.

A brief discussion occurred.

Ms. Maybach asked for clarification on the proposed change to the meeting date for November of 2026.

Ms. Heflin responded, outlining the issue and suggested corrections.

Ms. Maybach asked about correcting the date on the resolution.

Ms. Heflin responded, outlining the steps to adopt the schedule with changes.

Ms. Scullin moved to adopt the 2026 organizational meeting schedule with corrections as discussed.

Mr. Mulliss seconded. All in favor. The vote was as follows:

Ayes: ***Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin***

Nays:

Absent During Vote:

By Laws Discussion

Ms. Maybach started the discussion.

Ms. Scullin asked for clarification.

Ms. Heflin responded and outlined the purpose of the change being discussed.

Mr. Baggett moved to approve the by-laws as amended.

Ms. Helander seconded. All in favor. The vote was as follows:

Ayes: ***Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin***

DRAFT

Nays:
Absent During Vote:

2025 Board of Zoning Appeals Annual Report

Ms. Heflin presented the 2025 annual report.

Ms. Maybach asked about the protocol to submit comments for the Zoning Ordinance consultants.

Ms. Jenkins provided the options for submission of comments.

Ms. Maybach asked a question not captured by the audio.

Ms. Jenkins briefly discussed the existing non-conforming lots and potential changes to the ordinance.

Ms. Maybach asked for any questions.

Ms. Heflin advised the Board that there were currently no items for the March 2026 meeting.

Ms. Scullin moved to cancel the March 2026 meeting.

Mr. Baggett seconded. All in favor. The vote was as follows:

Ayes: ***Ms. Melea Maybach, Chair; Mr. Van Baggett, Vice Chair; Ms. Susan Helander; Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin***

Nays:
Absent During Vote:

ADJOURNMENT

There being no further business, Ms. Maybach adjourned the meeting at 6:30pm.

I hereby certify that this is a true and exact record of actions taken by the Board of Zoning Appeals of the Town of Warrenton on February 03, 2026.

_____

Melea Maybach, BZA Chair

DRAFT

Motion for Convening a Closed Session

Board Meeting Date: 2/3/26

I move that the Board of Zoning Appeals convene in closed session to discuss the following:

_____ As permitted by Virginia Code § 2.2-3711 (A)(7), consultation with legal counsel or briefing by staff members or consultants pertaining to the pending case of BZA-25-3, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Town.

CERTIFICATION MOTION AFTER RECONVENING IN PUBLIC SESSION:
(**requires a recorded roll call vote**)

I move that the Board certify that, in the closed session just concluded, nothing was discussed except the matter or matters (1) specifically identified in the motion to convene in closed session and (2) lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information Act as cited in that motion.

Votes:
Ayes: Ms. Melea Maybach, Chair; Ms. Susan Helander, Mr. Kenneth "Charlie" Mulliss, Ms. Elizabeth Scullin
Nays:
Recusal: Mr. Van Baggett, Vice Chair

For Information:
Town Clerk

Effective date: 02/03/2026

Heather Jenkins, BZA Secretary
_____.

PUBLIC COMMENTS

WHITEFORD

Two James Center
1021 East Cary Street, Suite 2001
Richmond, VA 23219-4341
804.977.3300

Michael H. Brady
Partner
804.977.3303
MBrady@whitefordlaw.com

January 27, 2026

VIA EMAIL & HAND DELIVERY
TOWN OF WARRENTON BOARD OF ZONING APPEALS
c/o Heather E. Jenkins, Secretary
Warrenton Department of Community Development
21 Main Street
Warrenton, VA 20188
bza@warrentonva.gov; hjenkins@warrentonva.gov

Re: Amazon's Petition for Appeal from Zoning Administrator's October 24, 2025, Determination, BZA-25-3 ("Amazon's BZA Appeal")

Ms. Maybach and Members of the Board of Zoning Appeals:

I write on behalf of the plaintiffs-petitioners Kevin & Amy Hampton, Patricia Tucker, Scott Wehner, Claudia Dolores Sandoval González, Carlos Ivan Lemus Bojórquez, and the Citizens For Fauquier County (collectively, the "Citizens") in Case No. CL23000128-00 in the Fauquier County Circuit Court, filed in March 2023 ("Amazon SUP Case"). The Petitioner here, Amazon Data Services, Inc. ("Amazon"), as well as the Town of Warrenton and its various officials, including the Zoning Administrator, are parties to the Amazon SUP Case, which will be tried in just over a month, beginning March 9, 2026.

Given the imminence of trial, the existing stay of approvals relating to the data center, and Amazon's earlier assertion of vested rights in the Amazon SUP Case, the BZA should defer proceeding on Amazon's BZA Appeal at this time. If it does proceed, the BZA should affirm the determination that Amazon gained no vested rights by forging ahead in the face of legal challenges.

BACKGROUND & SUMMARY OF ARGUMENT

Much has been written regarding Amazon's BZA Appeal of the Zoning Administrator's October 24, 2025, determination that Amazon does not possess a vested right to a data center use (the "Determination"), one that is presumptively correct. Va. Code § 15.2-2309(1). That said, four points, in the Citizens' judgment, have not been addressed enough: (1) the voidness of SUP 22-3, issued to Amazon on February 15, 2023 (the "Amazon SUP"), and subsequent Site Development Plan Approval, SDP-2023-06 (the "Amazon SDP"); (2) Amazon's knowledge of public opposition to the data center and legal challenge to the Amazon SUP and the Amazon SDP; (3) Amazon's election to adjudicate the question of vested rights before the Circuit Court in the Amazon SUP Case, thus depriving the BZA of jurisdiction over

**Whiteford, Taylor & Preston LLP is a limited liability partnership. Our Delaware offices are operated under a separate Delaware limited liability company, Whiteford, Taylor & Preston LLC*

this appeal; and, following from the others), (4) the lack of any good faith reliance on either the Amazon SUP or the Amazon SDP, which is what Amazon must show to claim vested rights.

Although the Citizens are not a party to Amazon's BZA Appeal, let there be no mistake: a BZA decision reversing the October 24, 2025, determination of Zoning Administrator Jenkins (the "Determination") would affect their rights, and may even prevent them from obtaining any relief from the Amazon SUP Case. That case has been pending since March 16, 2023, has required the investment of substantial resources by the Citizens, and is slated to go to trial on Monday, March 9, 2026, in Fauquier County Circuit Court. Besides being parties to the Amazon SUP Case, the Citizens are also parties to two appeals pending before the BZA since the summer of 2024, BZA-2024-1 and BZA-2024-2, which challenges the Amazon SDP (the "Citizens' BZA Appeals"). Thus, and despite the Citizens not being a party to Amazon's BZA Appeal, an adverse BZA decision would make them "aggrieved" under Virginia Code § 15.2-2314 and entitle them to seek judicial relief.

The Citizens' BZA Appeals of the Amazon SDP were deferred pending resolution of the Amazon SUP Case, a step that may be taken despite the 90-day period in Code § 15.2-2312. *See Tran v. Bd. of Zoning Appeals of Fairfax Cnty.*, 260 Va. 654, 658 (2000) ("[W]e hold that the 90–day time period for appeals in Code § 15.2–2312 is directory rather than mandatory and that the BZA did not lose jurisdiction to render a decision on appeal of the Zoning Administrator's action after 90 days had passed."). The BZA should do the same here, particularly given the imminence of trial in the Amazon SUP Case, which commences March 9, 2026, and the terms of the Consent Order entered by the Circuit Court on January 14, 2025, therein. A copy of the Consent Order entered by Judge James P. Fisher is attached as **Exhibit 1**.

The Consent Order exists precisely to maintain the status quo and prevent Amazon from doing what it is doing here: seeking further approvals or permits from the Town related to the development of the Property while the Circuit Court determines whether the challenged prior approvals are void. Amazon's request for a vested rights determination seeks to effectively moot that litigation through administrative means. The BZA should not agree to assist Amazon in evading the Consent Order or permit itself to be used to interfere with an ongoing court proceeding.

Indeed, the Consent Order, requested and agreed to by Amazon, unambiguously prohibits it from seeking "further permits or approvals related to the construction of a data center on the Property," or "otherwise further construction of the data center on the Property," until a Final Order resolves the above-referenced litigation. It also prohibits the Town of Warrenton from "approv[ing]" any such "permits or approvals." The plain language admits of no exception for determinations under Virginia Code § 15.2-2307. Amazon's July 25, 2025, request of the Zoning Administrator for a vested rights determination, approving its claimed right to further construction of the data center on the Property, and the Petition violate the Consent Order. This violation will be placed before the Circuit Court through a Verified Motion for Rule to Show Cause as soon as the Circuit Court reopens. The BZA should not aid Amazon in violating a court order or subjecting the Town to a finding of contempt while this show cause motion is pending.

For these reasons, the BZA should defer Amazon's BZA Appeal. But those are not the only, or even the most decisive, reasons to refuse proceeding. As explained in Part III below, the Circuit Court of Fauquier County has acquired jurisdiction over the vested rights issue based on Amazon's decision to raise

it as a defense in its Answer in the Amazon SUP Case, filed on March 22, 2024. Having done so, Amazon has elected for that issue to be decided by the Circuit Court and cannot also seek a vested rights determination from the BZA.

Finally, if the BZA does not defer, Amazon's BZA Appeal should be denied, and Amazon found to have no vested rights in the proposed data center use on the Property, which it has pursued in the face of legal challenges to its right to do so and not in "good faith reliance" on any approval, as required by Virginia law, including Virginia Code § 15.2-2307.

What's more, Amazon's conduct belies its efforts to cast itself as a hapless victim of changing political winds. Indeed, Amazon charged ahead without assurances, long before the Amazon SUP was granted—spending nearly $40 million in purchasing the Property—and continued spending despite being apprised of the unlawfulness of the Amazon SUP and the Amazon SDP. Matters of public record demonstrate Amazon was not an unsuspecting party caught unawares, but a sophisticated, determined litigant, cognizant that the Amazon SUP and the Amazon SDP were subject to challenge as unlawful, but determined to moot these challenges by forging ahead. This objective notice of unlawfulness and of risk that these approvals may be set aside undercuts any claim that it "relie[d] in good faith" on the Amazon SUP, the Amazon SDP, or any other approval, and so defeats its vested right claim.

ARGUMENT

I. The Amazon SUP and the Amazon SDP, which Depends on It, Are Void.

The Amazon SUP was issued under zoning amendment ZNG2021-0321, which was approved by the Town Council on August 10, 2021 ("Data Center Zoning Amendment"). This amendment was sought by Amazon, whose counsel assisted in its drafting because, without it, data center uses were not allowed under the Town's Zoning Ordinance. *See* Peter Cary, "Documents reveal developer's role in Warrenton's new zoning rules for data centers," PRINCE WILLIAM TIMES (Aug. 1, 2022), https://www.princewilliamtimes.com/news/documents-reveal-developers-role-in-warrentons-new-zoning-rules-for-data-centers/article_81a66419-370c-5a7e-9919-281ab9775381.html, attached as **Exhibit 2**.

By Virginia Code, this use could be added, but only by complying with a process for initiation, consideration, and adoption. As part of that process, Virginia Code § 15.2-2286(A)(7) prescribes that an amendment may occur "[w]henever the public necessity, convenience, general welfare, or good zoning practice requires," and permits "[a]ny such amendment [to] be initiated" by, among other things, a "resolution of the governing body," but mandates that "[a]ny such resolution . . . by such governing body . . . proposing the rezoning shall state the above public purposes therefor."

The Town Council purported to initiate the Data Center Zoning Amendment to authorize data center uses by a resolution dated April 13, 2021 ("Data Center Resolution"). A copy of the Data Center Resolution, which was approved, but never executed, is attached as **Exhibit 3**. That resolution did not state any public purposes, as required by Virginia Code § 15.2-2286(A)(7).

Failure to comply with that requirement results in the invalidation of the zoning amendment. *See, e.g.*, *Ace Temporaries, Inc. v. City Council of the City of Alexandra*, 274 Va. 461, 467 (2007) ("Code § 15.2-2286(A)(7) requires that each time an amendment to the Zoning Ordinance is made, the amendment must be properly initiated," i.e., by "an initiating motion . . . with a stated public policy reason"). Under this rule, the Data Center Zoning Amendment is void *ab initio*, meaning it can be challenged at any time. As a result, the Amazon SUP and all other approvals issued in reliance on that invalid Data Center Zoning Amendment, purporting to approve a use not allowed by the Zoning Ordinance, are void too, as the Citizens alleged in the Amazon SUP case. *See Renkey v. Cnty. Bd. of Arlington Cnty.*, 272 Va. 369, 376 & n.7 (2006); *see also* Town of Warrenton Zoning Ordinance § 11-3.10.1 ("Only those special use permits that are expressly authorized . . . may be approved").

In fact, Amazon's counsel throughout the Amazon SUP and the Amazon SDP process, and who sought the Determination, John H. Foote, Esquire, was counsel of record in *Ace Temporaries*, in which he defeated a zoning amendment for want of initiation. He quite literally wrote the book on that law in Virginia. In it, summarizing the holding of *Ace Temporaries*, Mr. Foote noted that "a failure to state one or more of the four listed purposes in the initiation resolution or motion is a procedurally fatal defect that renders an enactment void ab initio." *See* John H. Foote, *Planning and Zoning* in Handbook of Virginia Local Government Law § 1-12.08, at 1-74 (April Wimberly ed., 2022 ed.) (hereinafter, "Foote, *Handbook*"). In the *Handbook*, Amazon's counsel also observed that the Supreme Court has "held that the thirty-day appeal period applies only to 'judicial review of the reasonableness of the rezoning enactment,'" and "does not bar claims that a rezoning ordinance is void ab initio for asserted procedural defects." Foote, *Handbook* § 1-12.11(b), at 1-76 (citing *Kole v. City of Chesapeake*, 247 Va. 51, 57 (1994)). The Circuit Court in the Amazon SUP Case agreed with that analysis and refused to dismiss the Citizens' claims on those grounds. Exhibit 6 *infra*.

II. Amazon's Proposed Data Center Faced Public Opposition, and the Amazon SUP and the Amazon SDP, Approving that Use, Have Been Subject to Appeal, and Even a Stay, Since Issued.

After enactment of the Data Center Zoning Amendment, Amazon applied for the Amazon SUP. It faced vocal public opposition throughout the process, culminating in a public meeting at which citizen comments in opposition lasted until 2:30 a.m., when it was approved by a vote of 4-3. *See* James Jarvis, "Warrenton Town Council approves Amazon data center proposal" FAUQUIER NOW (Feb. 15, 2023), https://www.fauquiernow.com/news/business/warrenton-town-council-approves-amazon-data-center-proposal/article_3913e82e-ad0a-11ed-83f3-538a8a5bb411.html, attached as **Exhibit 4**. The next day, counsel to Amazon noted in an email to counsel for the Town that "the likelihood of litigation is very high." A copy of that email is attached as **Exhibit 5**. His predictions were borne out.

On March 16, 2023, the Citizens filed a 6-count Petition, challenging the Amazon SUP, in compliance with Virginia Code § 15.2-2285(F). Amazon intervened in the suit on April 14, 2023.

Based on the reasoning summarized above, the Citizens sought: (1) a declaration that the Data Center Zoning Amendment—and the Amazon SUP by extension—was "unlawful and void *ab initio*, a nullity, and of no force or effect"; (2) an order prohibiting Amazon and the Town from taking any action "to advance work on the Data Center or at the Property to further that use"; and (3) an order directing

the Town "to deny any applications for and otherwise refuse to issue the Data Center Permits and any other governmental approval to the Data Center or otherwise premised upon the void Amazon SUP . . . or Data Center Zoning Amendment," which expressly included the Amazon SDP.

Amazon and the Town moved to dismiss the Citizens' claims. Agreeing with the Citizens, the Fauquier County Circuit Court rejected Amazon and the Town's motion, ruling on December 13, 2023, that the Citizens had alleged facts showing "that the Data Center Zoning Amendment is void *ab initio* . . . and that the Data Center SUP is also void *ab initio*," and so had stated claims "upon which the relief demanded may be granted under Virginia law." A copy of the Court's order memorializing the rulings made by Judge James P. Fisher is attached as **Exhibit 6**.

In the face of the Amazon SUP Case, Amazon proceeded with seeking the Amazon SDP, which was approved on April 18, 2024, but was promptly appealed to the BZA by the Citizens, in BZA-24-1, on May 17, 2024. When Mr. Robert L. Walton purported to decide for the BZA that such appeal was not permissible, that determination too was appealed to the BZA by the Citizens, in BZA-24-2, on June 11, 2024 (collectively, the "Citizens' BZA Appeals"). These appeals automatically stayed all "proceedings in furtherance of the action appealed from," to wit, the Amazon SDP, under Virginia Code § 15.2-2311(B), meaning the Amazon SDP was not "in effect" and foreclosed any "good faith reliance" on it by Amazon.

Out of an abundance of caution, on May 29, 2024, the Citizens also filed an Emergency Motion for Preliminary Injunctive Relief in the Amazon SUP Case (the "Vested Rights Motion"), requesting entry of an immediate stay, direction to the BZA to proceed on the Citizens' BZA Appeals, and that "all proceedings in furtherance of" either the Amazon SUP or the Amazon SDP "be stayed" "throughout the duration of any appeal" thereof, including "through final judgment," basing the claim of emergency on the potential that vested rights may be claimed to follow from the Amazon SDP, upon passage of the 60-day period under Virginia Code § 15.2-2311(C), a section Amazon now cites. Amazon made no response.

The Circuit Court evaluated the Vested Rights Motion and concluded that time was not of the essence, specifically that the Vested Rights Motion "does not articulate a legal emergency," and so put the matter off until January 21, and 22, 2025, long after the 60-day period would run if the stays were not in place. In the meantime, the Citizens also filed a petition for writ of mandamus in the Circuit Court, Case No. CL24000303-00, on June 10, 2024, seeking an order compelling the Town Officials to permit the Citizens' BZA Appeals to proceed and so recognize the validity of the Citizens' BZA Appeals (the "Citizens' BZA Case").

While the Town actively contested the Citizens' BZA Appeals, the Vested Rights Motion, and the Citizens' BZA Case, Amazon still made no response. And it apparently was not pursuing any activity in furtherance of the Amazon SDP, consistent with its obligations under Virginia Code § 15.2-2311(B). Accordingly, neither the Citizens' BZA Appeals nor the Citizens' BZA Case advanced.

Instead, the parties proceeded with the Amazon SUP Case, and ultimately agreed to address maintenance of the status quo through a Consent Order, entered by Judge Fisher on January 14, 2025:

> ORDERED, ADJUDGED, and DECREED that Amazon shall not seek, nor shall the Town approve, further permits or approvals related to the construction of a data center on the Property, including, without limitation, land disturbance permits or building permits, nor shall Amazon otherwise further construction of the data center on the Property, until a Final Order has been entered. . . . Any Party may seek the dissolution or extension of this Order and, in the event that all Parties do not consent to its dissolution or extension, then before this Order is dissolved or extended the Preliminary Injunction Motion shall be scheduled for a hearing, and ruled upon.

A full copy is attached as Exhibit 1. With all further action stayed, the Citizens' BZA Case has lingered, as has the Citizens' BZA Appeal, awaiting the conclusion of the Amazon SUP Case.

It is because of the Amazon SUP Case that, after entry of the Consent Order, the BZA expressly deferred resolution of the Citizens' BZA Appeals of the Amazon SDP by Motion dated March 4, 2025, a copy of which is attached as **Exhibit 7**, "until such time as the Circuit Court renders a decision." That was both practically and legally the right decision given that the validity of the Data Center Zoning Amendment, the Amazon SUP, and the Data Center Permits, including the Amazon SDP, had already been challenged in the Amazon SUP Case.

III. Having Raised Vested Rights as a Defense in the Amazon SUP Case, the BZA Lacks Jurisdiction to Decide That Question Now.

In its Answer and Grounds of Defense dated March 22, 2024, Amazon put before the Circuit Court in the Amazon SUP Case the defense that it had a vested right to proceed with the data center use. For paragraph 5 of its grounds of defense, Amazon stated that

> 5. Amazon justifiably relied on the validity of the Data Center Zoning Amendment when it filed and processed its application for the SUP, and invalidation of the Data Center Zoning Amendment on the grounds alleged cannot impact the validity of Town Council's legislative approval of the SUP.

Amazon's Answer at 28, ¶ 5 (Mar. 22, 2024). A decision on that defense will be made following trial, which since January 14, 2025, has been scheduled to commence on March 9, 2026. Presently, that bench trial is scheduled to conclude by March 11, 2026. Under the terms of the Consent Order Withdrawing Standing Defense, Dismissing Certain Plaintiffs, and Releasing Certain Trial Dates, entered on January 23, 2026, both the Town and Amazon's standing defenses were dispensed, leaving the above-quoted vested rights

defense as one of the primary issues to be decided by the Circuit Court of Fauquier County. Yet Amazon seeks a decision from the BZA first, while the question is before that court.

It is improper for the BZA to proceed with deciding whether Amazon had vested rights in the Amazon SUP, while that same legislative action and that very defense are the subject of the Amazon SUP Case. *See Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566, 582 (2019) (holding that "a party can 'elect between' the zoning administrator and the circuit court, which have concurrent jurisdiction concerning vested rights determinations," and citing *Board of Supervisors v. Crucible, Inc.*, 278 Va. 152, 158 (2009), and *Craig v. Hoge*, 95 Va. 275, 279 (1897), as "explaining 'that between two courts of concurrent jurisdiction, the court which first acquires cognizance of the controversy . . . . is entitled to retain it until the end of litigation . . . and finally dispose of it'"). As the *Bragg* Court concluded, the landowner "has the right to select which of the [forums] having concurrent jurisdiction he will bring his action in," but, having elected as Amazon did here, the landowner is "bound by his selection and cannot thereafter bring an action concerning the same subject-matter in a tribunal having concurrent jurisdiction unless a question is involved that cannot be adjudicated by the first [forum]." *Id.* (citation omitted); *see also, e.g.*, *Smith v. Bd. of Supvrs. of Fairfax Cnty.*, 234 Va. 250, 255 (1987) (refusing to recognize local administrative authority over a local assessment because "[w]hen the statutory procedure is invoked, the determination of the correctness of a challenged assessment, as well as any grant of appropriate relief, become matters exclusively of judicial concern").

It is beyond dispute that the Circuit Court of Fauquier County first acquired jurisdiction over Amazon's vested rights argument and that it can adjudicate Amazon's claim of a vested right. And Amazon has urged it to do so. Thus, the BZA lacks jurisdiction to decide Amazon's BZA Appeal.

IV. Vested Rights Require "Good Faith Reliance," Which Cannot Be Created by Incurring Obligations or Expenses in Reliance on Acts the Legality of Which Is Under Challenge.

Regardless of whether the BZA has jurisdiction to decide whether Amazon has vested rights while the Amazon SUP Case remains undecided, the pendency of that case precludes a finding that any expenditures were taken in good faith reliance and so may give rise to vested rights.

"Whether a landowner has acquired a vested right in property is a question of law." *Bragg Hill Corp.*, 297 Va. at 581. Under Virginia law, vested rights have always required a showing of "good faith" reliance on an approval. Before the General Assembly adopted Code § 15.2-2307, the Supreme Court of Virginia noted that "[w]here . . . a special use permit has been granted under a zoning classification, a bona fide site plan has thereinafter been filed and diligently pursued, and substantial expense has been incurred ***in good faith*** before a change in zoning, the permittee then has a vested right to the land use described in the use permit and he cannot be deprived of such use by subsequent legislation." *Notestein v. Bd. of Supers. of Appomattox Cnty.*, 240 Va. 146, 151 (1990) (emphasis added).

The requirement of "good faith" is no makeweight. Rather, the Supreme Court has expressly rejected the "contention that a landowner may acquire a vested property right in a particular land use merely by showing a significant official governmental act and reliance thereon," which is all Amazon purports to show. Instead, the Supreme Court has insisted, among other things, "that the landowner

establish that he has . . . incurred substantial expense ***in good faith*** . . . . A landowner, who seeks to assert a vested property right, must establish all these elements." *Snow v. Amherst Cnty. Bd. of Zoning Appeals*, 248 Va. 404, 407 (1994) (emphasis added), *superseded on other grounds by* Va. Code § 15.2-2307 *as stated in City of Suffolk ex rel. Herbert v. Bd. of Zoning Appeals for City of Suffolk*, 266 Va. 137, 144–45 (2003).

Thereafter, the Virginia General Assembly expressly adopted this formulation, making it clear that "good faith reliance" is a separate element that the landowner must show to establish vested rights. *See* Va. Code § 15.2-2307(A) (providing for a vested right "when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act").

Given the requirement of a "significant affirmative governmental act which remains in effect allowing development of a specific project," Amazon can claim no vested right based on the passage of the Data Center Zoning Amendment, authorizing one to seek an SUP for a data center. *See Town of Leesburg v. Long Lane Assocs. Ltd. P'ship*, 284 Va. 127, 135 (2012) ("[W]hen a landowner has only a future expectation that he will be allowed to develop his property in accord with its current classification under the local zoning ordinance, there is no vested property right in the continuation of the land's existing zoning status."); *see, e.g.*, *Town of Stephens City v. Russell*, 241 Va. 160, 164 (1991) (rejecting the argument that a landowner "had acquired a vested right in the zoning classification which existed before the zoning amendment was enacted" because the landowner "had not obtained any type of governmental permit or approval," at the time of the expenditures and construction). Thus, that invalid zoning amendment did not make Amazon "the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project," but merely allowed it to request such a "significant affirmative governmental act."

As noted above, Virginia law requires proof Amazon "relie[d] in good faith on the significant affirmative governmental act." Issuance of the Amazon SUP and/or Amazon SDP, and proof of subsequent activity consistent with those approvals alone, will not do. "Good faith" reliance must be shown. While there is little Virginia authority on what "good faith" means in this context, that requirement is not unique to Virginia law on vested rights. Rather, it has long been applied by the highest courts of the Commonwealth's sister states in similar circumstances to reject claims like those Amazon raises here.

For example, it has been generally recognized that the obligation of good faith reliance requires "reasonable" reliance and that "[a]ctions taken in reliance on a . . . permit while the time for appeal is pending are inherently unreasonable." *Ebzery v. City of Sheridan*, 982 P.2d 1251, 1257 (Wyo. 1999) (collecting cases). "Rather than protected activity, the commitment and expenditures under these circumstances are considered to be a calculated risk." *Id.* (collecting cases). Like Amazon here, in *Ebzery,* the "Owners knew that the Board's decision was hotly contested and subject to appeal for 30 days after the time the Board rendered its final decision." Yet "before the time for appeal had passed, they executed a contract and paid a non-refundable deposit for materials, tore down substantial portions of the hedge, and paved a driveway, providing for the placement of fence posts," and otherwise "continued to substantially complete the construction after the appeal was filed despite the fact the petitioners had

concurrently filed a motion for stay of the administrative order." In those circumstances, the Court held that "the theory of vested rights does not apply." *Id.* The Supreme Court of Wyoming has more recently applied this rule to reject claimed reliance on a challenged special use permit in similar circumstances. *Northfork Citizens For Responsible Dev. v. Bd. of Cnty. Comm'rs of Park Cnty.*, 228 P.3d 838, 847 (Wyo. 2010) ("Expenditures made with knowledge of a court challenge are not expenditures made in good faith reliance upon a variance or permit. We continue to hold that, in Wyoming, completion of a project under a variance or permit during the pendency of an appeal does not render the appellate issues moot.").

Wyoming is not alone. In *Bowman v. City of York*, 240 Neb. 201, 216 (1992), the Nebraska Supreme Court was asked to recognize vested rights when an owner "knew for almost a week before it began construction that the variance under which it was proceeding faced a court challenge." The Court refused, noting "[a]ny expenditures it made under that circumstance cannot be said to have been made in good faith reliance on the variance. In the words of the district court, 'Economic might under a guise of claimed good faith detrimental reliance cannot replace or change due process of law.'" *Id*. (citation omitted)

The Supreme Court of New Hampshire too held that "landowners who decide to proceed with their projects heedless of serious questions about the legality of their actions may be deemed to have taken a 'calculated risk,' rather than to have relied in good faith. . . . Such reliance is neither reasonable, nor in good faith." *Hussey v. Town of Barrington*, 135 N.H. 227, 232–33 (1992) (internal citations omitted).[1]

So too holds the Supreme Court of Maine. *NECEC Transmission LLC v. Bureau of Parks & Lands*, 281 A.3d 618, 635, as revised (Me. 2022) (holding that to acquire a vested right by reliance, "[t]hat permit must be final and not subject to direct or further appeal").

The same goes for the highest Court in the State of Maryland. *See, e.g.*, *Powell v. Calvert County*, 795 A.2d 96, 101 (Md. 2002) ("[A] special exception approval, whose validity is being litigated, is not finally valid until all litigation concerning the special exception is final. Persons proceeding under it prior to finality are not 'vesting' rights; they are commencing at 'their own risk' so that they will be required to undo what they have done if they ultimately fail in the litigation process.").

And so too the highest court in North Carolina has held. *Stowe v. Burke*, 255 N.C. 527, 533 (1961) (explaining that when a landowner received an approval "fully aware of a community of opposition to the project and of pending legislation which, if adopted, would prevent defendants from proceeding with the project," yet "moved forward with construction at an extraordinary pace in an attempt . . . to establish a

[1] *See also, e.g.*, *Columbus Bd. of Zoning Appeals v. Wetherald*, 605 N.E.2d 208, 210 (Ind. Ct. App. 1992) ("We cannot sanction Wetherald's construction pending appeal as creating mootness; otherwise, those seeking variances for construction purposes could circumvent zoning requirements by simply constructing in accordance with permits issued, although final resolution of the propriety of such variances was still pending on appeal. Wetherald proceeded to build at his own peril prior to a final resolution of the variance issues."); *Schneider v. Calabrese*, 5 Pa. Cmwlth. 444, 453–54 (1972) (holding that "one who obtains a building permit and begins construction" or "executes a building contract," or "obligates himself on a mortgage" "prior to expiration of the appeal period ordinarily proceeds at his own peril." (citing *Cheltenham Township Appeal*, 413 Pa. 379 (1964); *Riccardi v. Plymouth Township Board of Adjustment*, 393 Pa. 337 (1958); *Silverco, Inc. v. Zoning Board of Adjustment*, 379 Pa. 497 (1954))).

right to continue the project," "the court below was justified in concluding that [said landowner] did not act in good faith in doing the work on the project and in incurring expenditures with respect thereto.").

The highest court in Pennsylvania also agrees. *See Beecham Enters., Inc. v. Zoning Hearing Bd. of Kennedy Twp.*, 530 Pa. 272, 275 (1992) (affirming the finding that a "case for vested rights lacking with respect to the fourth factor, 'the expiration without appeal of the period during which an appeal could have been taken from the issuance of the permit'").

Indeed, it appears no State Supreme Court that has ruled in favor of Amazon's position here. That being so, the General Assembly must be presumed to have been aware of this understanding of the term "good faith" when it adopted Virginia Code § 15.2-2307 and intended it to apply in Virginia. Thus, the BZA would not only be embarking into territory previously unknown to the basic tenets of local government law in this country if it agrees with Amazon's positions, but it would also be flouting the Assembly's intent.

Consistent with this understanding, there is no Virginia authority suggesting that a vested right may arise without good faith reliance or that one may rely in good faith in the face of substantiated challenges to the legality of the approval. Rather, whether proceeding under the common law, Virginia Code § 15.2-2307(A), or Virginia Code § 15.2-2311(C), the landowner must show he "relied in good faith" or that there was "good faith reliance," respectively. Were "subsequent expenditures in furtherance" enough, the case law or Code would say so.

The cases cited by Amazon support no such rule. In *Board of Supervisors of Richmond Cnty. v. Rhoads*, 294 Va. 43, 50 (2017), cited by Amazon, no one had advised "the Rhoadses that the Garage violated the Ordinance until more than 240 days after Quicke signed the Certificate, approving the Garage," and the Rhoadses had already built it. On these facts, it was "undisputed that the Rhoadses materially changed their position in good faith reliance on the zoning administrator's approval of the zoning for their building plans." *Id.* And in *Board of Supervisors v. Bowman*, there was also no challenge or other notice prior to reliance that the "flagpole installation violated any zoning ordinances," and no evidence that the Bowmans acted "to obtain an unconscionable advantage," but solely in reliance on what they were told. *Bd. of Supvrs. of Prince Edward Cnty. v. Bowman*, No. 0490-23-2, 2025 WL 1033993, at *9–10 (Va. Ct. App. Apr. 8, 2025) (per curiam). Amazon suffered from no similar lack of notice.

Against a deluge of evidence of notice of illegality, in the face of persistent legal opposition, and in conflict with a raft of on-point persuasive authority holding that such facts negate good faith reliance, Amazon offers no contrary authority to support its position. Apparently, the research of both Amazon and of the undersigned has not revealed ***a single published decision*** from any court holding that a party may rely in good faith, and so acquire vested rights, by advancing construction during an appeal period or during the pendency of an appeal. That Amazon is asking the BZA of the Town of Warrenton to become the first tribunal to so hold should tell this body all it needs know.

What is worse, Amazon has produced no evidence of good faith reliance on a prior approval of a data center use on its property in the Town. Instead, it offers only two things. First, Amazon points to its actions in furtherance of the data center use, both before and after the Data Center Zoning Amendment's passage, the approval of the Amazon SUP, and the issuance of the Amazon SDP. With respect to any

reliance pre-dating the Amazon SUP, one cannot rely on anticipated acts, potential future approvals, or on the state of existing zoning laws, but rather must base his reliance on an act in which the landowner "obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project." Va. Code § 15.2-2307(A); *see Town of Leesburg*, 284 Va. at 135 ("[W]hen a landowner has only a future expectation that he will be allowed to develop his property in accord with its current classification under the local zoning ordinance, there is no vested property right in the continuation of the land's existing zoning status."); *see, e.g.*, *Town of Stephens City*, 241 Va. at 164 (rejecting the argument that a landowner "had acquired a vested right in the zoning classification which existed before the zoning amendment was enacted" because the landowner "had not obtained any type of governmental permit or approval," at the time of the expenditures and construction). Thus, Amazon's claim of reliance on the anticipated or adopted Data Center Zoning Amendment, or any assurances prior to issuance of the Amazon SUP, fails as a matter of law.

Most of Amazon's "reliance" occurred before the Amazon SUP was even sought, much less approved. As Amazon admitted in the Amazon SUP Case, it spent $39,703350.00, more than ten times the assessed value, on the Property that is the proposed site of the data center, on or about September 21, 2021, shortly after the Data Center Zoning Amendment was passed, nearly 17 months before the Amazon SUP was issued. *See* Pet. ¶¶ 32, 33 (Aug. 21, 2023); Amazon's Answer ¶¶ 32, 33 (Mar. 22, 2024).

Second, in urging good faith reliance, Amazon asserts the absence of evidence regarding what it subjectively knew in the "record here," an omission of its making. *See* Amazon's BZA Appeal at 9 n.3. In doing so, Amazon ignores that it has the burden of proof and must prove its good faith. *See Goyonaga v. Bd. of Zoning Appeals*, 275 Va. 232, 244 (2008). Regardless, the Citizens have shown that Amazon was well aware of the law rendering the Data Center Zoning Amendment and approvals taken in reliance thereon to be void *ab initio*, and that as early as February 16, 2023, anticipated that the Amazon SUP would be challenged in court. *See* Exhibit 5. And there is no claim that Amazon was not timely apprised of the Amazon SUP Case, which it voluntarily intervened in by Motion on April 12, 2023.

Regardless, and whatever Amazon was told by its counsel or subjectively thought, a fact Amazon has not proffered, the BZA should follow the weight of authority treating "actions taken in reliance on a . . . permit while the time for appeal is pending [to be] inherently unreasonable." If this rule is not followed, Amazon and other large interests could unilaterally cut off the constitutional right to challenge unlawful government action, including during the 30-day period recognized in Virginia Code § 15.2-2285(F). With all of Amazon's alleged acts of "good faith reliance" having been taken while the Amazon SUP and Amazon SDP were either subject to appeal, or actively on appeal (even stayed), none can cure those unlawful governmental acts or entitle Amazon to build an illegal data center.

One cannot simply win the race once notice of illegality has been obtained; rather, "[t]hroughout the cases in which the rule appears there runs the dominating theme of fairness and good faith," "without 'racing'" to claim a vested right with knowledge that it may be declared unlawful. *Penn Twp. v. Yecko Bros.*, 420 Pa. 386, 391 (1966). The treatise writers have summed up the judicial treatment of this "so-called 'race of diligence,' stating that a controversy of this kind, i.e., between a permit holder's private right and the general public interest, should not depend on the outcome on a race for technical advantage." *See* 4 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 70:30 (4th ed.). Nor should "[e]conomic

might under a guise of claimed good faith detrimental reliance . . . replace or change due process of law.'" *Bowman*, 240 Neb. at 216 (citation omitted).

Rather than vesting rights, Amazon's acts in "reliance" on these timely and lawfully challenged acts are proof of its violation of both the Consent Order, the jurisdiction of the Circuit Court, and the automatic stay in Code § 15.2-2311(B). As such, those acts can confer no rights, but only expose Amazon to sanctions. For that reason, counsel to the Citizens are filing a Motion for Rule to Show Cause why Amazon should not be held in contempt in the Amazon SUP Case.

* * *

The parties agreed, and the Circuit Court ordered, that the parties resolve Amazon's entitlement to proceed with the data center through orderly judicial proceedings, with trial in the Amazon SUP Case set for March 2026. That order must be honored and the courts respected. What's more, Amazon elected to put the question of vested rights before the Circuit Court, the body that appoints the BZA. It must be held to that election. Amazon's belated attempt to obtain from this tribunal what is now committed to the courts violates both the letter and spirit of the Consent Order and exceeds the BZA's jurisdiction.

At the least, the BZA should defer Amazon's BZA Appeal while the Amazon SUP Case proceeds. Even if it does not defer, the BZA should deny Amazon's claim of vested rights. The opposition conclusion would require the BZA to rule that Amazon may set at naught all Virginia law demarcating the limits of legislative action on zoning matters simply by plowing ahead in the face of legal challenges, and so would reward Amazon for willfully ignoring the law.

With appreciation for your consideration of the Citizens' rights, I am,

Very truly yours,



Michael H. Brady

Enclosures
CC: Heather E. Jenkins, Secretary of the Board of Zoning Appeals of the Town of Warrenton
Matthew A. Crist, Esq., Counsel to the Board of Zoning Appeals of the Town of Warrenton
Gordon D. Todd, Esq., Counsel to Amazon
Matthew A. Westover, Esq., Counsel to Amazon
J. Chapman Petersen, Esq., Special Counsel to Town
Philip Carter Strother, Esq., Town Attorney

V I R G I N I A:

BEFORE THE TOWN OF WARRENTON BOARD OF ZONING APPEALS	)))))	**AMAZON'S PETITION FOR VESTED RIGHTS IN ITS WARRENTON PROPERTY**

AFFIDAVIT OF BRIAN KNIES

COMES NOW Brian Knies, having been duly sworn, and hereby affirms as follows:

1. I served as the AWS Senior Real Estate Development Manager of Amazon Web Services ("AWS"), a subsidiary of parent company Amazon.com, Inc. ("Amazon"), a Delaware corporation headquartered in Seattle, Washington, for three years, during the period from September 2022 through the present.

2. My role for AWS was primarily as an individual contributor assisting with management of Amazon's properties. My role frequently included management of Amazon's land development processes and interacting with local representatives in the areas where Amazon was currently developing property, including Virginia.

3. The facts as I have laid them out in this affidavit are true and correct based on my own personal knowledge and belief, my review of Amazon and AWS company records, and my discussions with other knowledgeable and informed company employees and consultants.

4. AWS is the world's most comprehensive and broadly adopted cloud platform, making cloud computing and generative AI accessible to organizations of every size and industry. AWS has worked with individuals, companies, and governments to better their computing power, storage, databases, and other technological services by leveraging its global infrastructure and innovative footprint.

5. Amazon supports AWS by providing infrastructure for AWS's comprehensive cloud computing platform. As part of this, Amazon operates a network of data centers at geographically appropriate locations that support AWS's computational needs. Amazon is involved in both the site selection for these data centers and the subsequent construction on behalf of AWS.

6. On August 10, 2021, the Warrenton, Virginia Town Council adopted a Zoning Ordinance Text Amendment ("ZOTA") to allow data centers to be built in industrially zoned districts with a subsequently-approved special use permit ("SUP"). At Amazon, our understanding was that this change was something that had been deliberated within the Town Council and discussed with the public at length before it was ultimately voted into effect. Nothing about these proceedings by the Warrenton Town Council in which they passed the ZOTA suggested to me or to Amazon generally that the ZOTA was in any way improper or that it had been invalidly passed.

7. Following the enactment of the ZOTA, Amazon then purchased a 41-acre piece of industrial-zoned property on Blackwell Road in the town of Warrenton (Parcel Number 6948-69-2419-00), on September 21, 2021, 42 days after the Warrenton Town Council adopted the ZOTA.

8. Amazon's intent for this property was, and still is, to use the land to build one of its data centers. The Blackwell Road property meets Amazon's standard criteria for use as a data center, specifically its location parameters. In fact, the Blackwell Road property was one of very few sites in Northern Virginia at the time that was close enough to Amazon's other data centers to make it a good candidate for development.

9. Immediately after purchasing the Blackwell Road property, Amazon began having discussions with officials for the Town of Warrenton about pursuing an SUP that would allow Amazon to build a data center on the property. These discussions culminated in Amazon submitting an application for an SUP in April of 2022.

10. At all times, Amazon expected that its development of a data center would be a driver of revenue, employment, and economic investment in Warrenton, and it viewed the community as its partner in that effort. To that end, while Amazon's application for an SUP was being considered by the Town Council, Amazon made an intentional effort to engage with Town officials and constituents of the community. Amazon attended Town Council meetings, accepted feedback as to its early stage site plans, and began identifying specialists who could help Amazon build its data center while still respecting the Town's interests and concerns.

11. Ultimately, Amazon made a number of significant changes to its project plans during this time as a result of its conversations with Town stakeholders and residents. These changes included agreeing to bury power lines, perform sound tests at every stage of construction, and add a brick façade to the design plans for the data center to help it fit better with the Town's existing architecture.

12. On February 14, 2023, after months of back-and-forth about the potential project, the Warrenton Town Council approved Amazon's application and granted it an SUP for its Blackwell Road property. That approval was handed down during a public Town Council meeting after further public commentary on Amazon's application that very day until 2:30 in the morning, all of which was documented in the public Warrenton Town Council Meeting Minutes for February 14, 2023, which are published on the Town of Warrenton's website. The Town

Council also delivered the SUP approval and specific conditions to Amazon, which is included here as Exhibit 1.

13. Here, too, nothing about the Town's decision to grant that SUP raised any cause for concern from Amazon about proceeding with the project. On the contrary, the Town Council and Amazon both had taken care over the course of months to ensure that various stakeholders' concerns had been heard and adequately addressed before Amazon's SUP was granted. During the meeting in which Amazon's SUP was finally granted, those concerns were once again heard and fully probed by the various members of the Council, and only then was Amazon's SUP granted. By all appearances, the decision to grant Amazon's SUP was with those concerns in mind, not to their disregard, giving Amazon confidence that the foundation on which its SUP was approved was sound.

14. In good faith reliance on this SUP, Amazon immediately began taking steps to begin turning the Blackwell Road property into a data center. Starting in late February 2023, Amazon undertook the following:

a. Amazon identified and executed contracts with construction and engineering firms, such as Bohler Engineering, who then went on to secure additional subcontracts with various specialists on Amazon's behalf.

b. Amazon performed environmental due diligence, soil sampling, and other geotechnical testing on the Blackwell Road property.

c. Amazon felled trees on the property to ready the land for building.

d. Amazon engaged outside acoustic engineers to evaluate the noise impact of the Project.

e. Amazon developed plans to tie into adjacent utilities and handle stormwater management, drew up detailed design schematics, and then integrated all of this work into an initial set of site plans.

f. Amazon then filed its initial site plan proposal with the Town of Warrenton Office of the Zoning Administrator on March 22, 2023.

15. Amazon took these steps while continuing to actively communicate and coordinate with private and public partners, including officials from the Town of Warrenton and from the Commonwealth. I was one of a few employees of Amazon that met biweekly with staff for the Town of Warrenton—specifically, with Director of Community Development Rob Walton—to discuss logistics and coordinate activity on upcoming stages of development for the Blackwell Road property. These discussions were intended to maintain transparency between the Town and Amazon as the project progressed. Ensuring the project was conducted through the proper channels with all necessary approvals was a major point of emphasis. At no point did I get any indication from those conversations that Amazon could not or should not be moving forward with its planned project.

16. In March 2023—after Amazon had already invested significant time and resources into development of the property, and after it already had incurred multiple contracts and other obligations in anticipation of moving the project forward—Amazon became aware that citizens of the Town of Warrenton had filed suit against the Town challenging the ZOTA and the Town's grant of an SUP to Amazon for development of its Blackwell Road property. Though not originally named in the case, Amazon moved to join the litigation as a party on April 13, 2023.

17. The mere filing of this action did not keep the Office of the Zoning Administrator from continuing to substantively engage with Amazon on its site plan and advancement of the

project. Though it rejected Amazon's original site plan submission, the Office of the Zoning Administrator worked with Amazon through multiple iterations of comments, responses, and revisions through the spring and summer of 2023, which were all extremely thorough.

18. The Zoning Administrator ultimately accepted a revised full site plan submission from Amazon in October of 2023, and approved it on April 18, 2024, in a formal letter addressed to Amazon, attached as Exhibit 2.

19. During this same time period, in December 2023, the Circuit Court dismissed several of the claims raised against the Town and Amazon—including all of the claims having to do with its SUP—narrowing the underlying litigation to focus only on the specific legal question of whether the passage of the ZOTA was proper. Consequently, there are currently no active challenges to the substance of the SUP.

20. Amazon accordingly took additional steps to develop the Blackwell Road property in continued reliance on its SUP and based on its communications with the Office of the Zoning Administrator and the subsequent approval of its site plan. On top of working with its design and engineering firm partners to reconsider and revise the site plan itself based on the Zoning Administrator's feedback, Amazon performed the following additional actions:

a. Amazon worked with a dozen or so specialty disciplines to ensure it was meeting the concerns of the Zoning Administrator and other Town stakeholders.

b. Amazon performed various property management activities, including hiring personnel, installing equipment to ensure security at the Property, and setting up services to keep the Property mowed, clean, and garbage-free.

c. Amazon began designing and initiating the procurement process for equipment that typically has a long lead time, such as generators, HVAC systems, and steel.

d. Amazon executed a Letter of Authorization with Dominion Energy on December 7, 2023 for use of a nearby electrical substation to power the future data center.

e. Amazon engaged with the Virginia Department of Environmental Quality and other agencies regarding construction activities for the Project and the execution of various easements to ensure full compliance and transparency at all levels of regulation.

21. Six months later, on January 14, 2025, Amazon formally committed to "maintain the status quo" and pause its efforts to develop its Warrenton property by agreeing to a consent order in the Circuit Court litigation.

22. Nevertheless, the actions taken by Amazon between when it received its SUP on February 14, 2023 and when it halted work on the project were a significant expense to the company and a significant investment in the project. In total, Amazon paid $3,097,249 in invoices, opened 22 purchase orders with a commitment value of $3,386,800.96, and executed 20 contracts with various entities to provide services related to the data center project, to say nothing of the time and investment of internal resources Amazon's efforts took as well.

23. At no time while taking these actions did Amazon believe that it lacked a solid legal basis to do so. Amazon would not have made these substantial investments had it believed the SUP could not be relied upon. During our biweekly meetings, Town Staff and Amazon took care to ensure that everything relating to the project was conducted consistent with all applicable laws as Amazon moved forward with the project.

24. Moreover, in my experience, it is neither unusual nor uncommon for any large development project to draw opposition from a small but vocal minority of residents and other interested parties. However, the mere fact that there may be some well-funded, organized

opposition does not suggest that the proponent's ability to move forward on the project is automatically cast into uncertainty. Indeed, if this were the case, then virtually all large-scale development projects would grind to an immediate halt.

25. Amazon took the actions that it did because it had a genuine interest in advancing the data center project and because it honestly believed that it had sufficient support for doing so—and for no other reason than that. Amazon has never had any intent to flout the orderly development process, nor has it sought to advance its data center project with any intent to defraud, deceive, or gain unconscionable advantage.

26. Today, because of the uncertainty surrounding when and whether Amazon will be able to proceed with its plans to build a data center in Warrenton, Amazon has been forced to pivot by leasing a data center space elsewhere to fulfill its customers' needs. That shift has cost Amazon tens of millions of dollars more than it expected to spend if it had been able to see through its development of the Warrenton location.

* * *

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.

Brian Knies

Brian Knies

Exhibit 1:
Special Use Permit Approval
February 14, 2023

SPECIAL USE PERMIT CONDITIONS OF APPROVAL
Applicant: AMAZON DATA SERVICES, INC. (the "Applicant")
Owner: AMAZON DATA SERVICES, INC.
SUP2022-0003, Amazon Data Center
PIN # 6984-69-2419 (the "Property")
Special Use Permit Area: ± 41.79 acres
Zoning: INDUSTRIAL (I)
Date: February 14, 2023

In approving a Special Use Permit, the Town Council may impose such conditions, safeguards, and restrictions as may be necessary to avoid, minimize, or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. The Council may require a guarantee or bond to ensure that compliance with the imposed conditions. All required conditions shall be set out in the documentation approving the Special Use Permit (SUP). These conditions shall run with the land so as to bind future landowners. Any party or officer identified by title shall mean and include any successor to that person or entity's powers or responsibilities.

1. Site Development: The Property shall be developed in substantial conformance with these conditions and the Special Use Permit Plan entitled, "Special Use Permit Plan for Amazon Data Services, Inc.," prepared by Bohler Engineering, dated July 10, 2022 and revised through January 10, 2023, and consisting of 3 sheets, subject to minor modifications approved by the Town in connection with final Site Plan review and final engineering, and except as otherwise provided in these Conditions (the "SUP Plan"). The building and other structures to be constructed on the Property are referred to herein as the "Facility."

2. Site Plan: The Applicant shall produce a site development plan that delineates the external noise emitting equipment that is to be installed and activated at each phase of the building. No phase or set of phases will begin operation until the Town has issued a conditional Certificate of Occupancy for such phase or phases. A final Certificate of Occupancy will be granted upon completion of all phases.

3. Use Parameters. Use Limitation: The use approved with this SUP shall be limited to a data center as set forth in § 3-4.12.3 of the Town of Warrenton Zoning Ordinance.

4. Electric Substation: There shall be no electric substation constructed on the Property.

5. Undergrounding of Electrical Lines from a Substation to the Facility: Pursuant to Warrenton Zoning Ordinance § 9-26.1(C), the distribution lines from the off-site substation serving the data center are required to be underground. Applicant will ensure payment of the undergrounding of these distribution lines with the utility company in accordance with its requirements.

6. Building Design and Elevations:

    a. The architectural design of the data center shall substantially conform to

the "Illustrative Building Elevations"; prepared by Corgan; February 14, 2023". The Elevations shall be subject to minor modification approved by the Town in connection with Site Plan review. Additional changes to the design and materials may be made provided that any such changes are approved by the Director of Community Development prior to the issuance of a building permit.

b. At time of Site Plan, the Applicant shall provide all elevations for the building in compliance with the Town of Warrenton Zoning Ordinance Article 9-26.1.F. In addition, the Applicant shall orient the building along Lee Highway to reduce the visible impact using architectural details such as a perceived reduction in massing and scale, fenestration and windows, exterior colors and materials, overhangs, canopy or porticos, recesses and/or projections, arcade, raised corniced parapets, and varying roof lines.

c. The Facility shall be no greater than 37 feet in height, as that term is defined in the Town Zoning Ordinance. The mechanical equipment installed on the roof of the building shall be screened.

d. Noise mitigation measures, including but not limited to, silencers, sound walls, acoustical wraps, and/or low noise equipment, shall be utilized to meet § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise.

7. Signage: There shall be no signage except for a street address; provided that if any further signage is sought it shall comply with applicable sign ordinance requirements.

8. Fencing: All fencing on the Property shall be as depicted on the SUP Plan, and shall not exceed 8 feet in height. Security fencing shall be the style and type as shown on Page 2 of the Special Use Permit Plan produced by Bohler dated July 10, 2022 and updated through October 28, 2022. Chain link fencing, with or without slatted inserts, and/or barbed wire or other similar visible deterrence devices shall not be permitted where visible from the public.

9. External Fuel Storage Tanks: The Applicant shall install above-ground double-walled fuel tanks that meet the definition of secondary containment under the DEQ LPR-SRR-2019-03 - Storage Tank Program Compliance Manual, Volume V - AST Guidance, and pursuant to 40 CFR Part 112, Section 8.1.2.2, in the general locations shown on the SUP Plan, for the storage of fuel supplies necessary to maintain an Uninterruptible Power Supply in the event of a loss of external electrical power.

10. Parking: The Applicant shall provide not fewer than 56 parking spaces as shown on the SUP Plan, one of which shall be a loading space.

11. Site Maintenance: The Applicant shall maintain the Property in a clean and orderly manner, and shall provide an on-site masonry screened refuse container station in the location generally shown on the SUP Plan.

12. Access: Access to the site shall be provided as shown on the SUP Plan, subject to changes approved by the Town in consultation with the Virginia Department of Transportation. Mountable curbs shall be provided as required by the Town. There shall be no access from either Routes 17 or 29.

13. Access for Town Staff: The Town is obliged to report annually to the Virginia Department of Environmental Quality as to the ongoing operation and maintenance of stormwater management facilities installed on the Property. The Applicant shall provide the Town Manager with an on-site employee who shall serve as the sole point of contact for arranging access to the Property for the Town's conduct of such inspections, and shall keep that point of contact current at all times.

14. Water & Public Sewer Connection: The Property shall connect to public water and public sewer at the Applicant's expense. The Applicant shall limit its water use to internal domestic uses such as service to bathrooms, kitchens, humidification, and external irrigation. It shall not use public water for the general purposes of cooling the data center but may use it for the initial charging of the cooling system. It shall consult with the Director of the Department of Public Works and Utilities as to the scheduling of the initial charging of the system so as to minimize the impact on the Town's water system. This condition does not exclude or prevent the property owner from utilizing the Town's water for fire suppression.

15. Emergency Services:

    a. The Applicant shall coordinate training between the Town's fire and rescue companies and those other companies and departments that have experience with data centers after commencement of operations at the Property and when convenient for the Town's first responders. Furthermore, upon commencement of operations at the Property, the Applicant will provide the Town's first responders its "Data Center Response Manual" for use in training for emergencies at its Facility, and shall assist in advising those first responders how to implement its provisions.

    b. The Applicant shall assure that the water line systems at the Facility have sufficient fire flows, as determined by the Town Fire Marshal.

    c. The Applicant shall maintain Facility security personnel 24 hours a day, and each day of the year.

16. Pedestrian access: The Applicant shall construct a five-foot sidewalk on the east side of Blackwell Road along its frontage on that Road.

17. Noise:

a. Each phase shall receive a conditional Certificate of Occupancy upon demonstrating conformance with the requirements of § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise. The Applicant shall provide and pay for a third-party sound test prepared by a qualified full member of Acoustical Society of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE), as approved by the Director of Community Development. The purpose of such test is to demonstrate the operation of each distinct phase as noted in Condition #2 after completion of the construction and prior to the issuance of the conditional Certificate of Occupancy. If the test finds the use does not meet § 9-14.2 of the Town of Warrenton Zoning Ordinance, then there shall be no commencement of use for that phase and no conditional Certificate of Occupancy shall be issued.

b. The Applicant shall pay for an annual sound test prepared by a qualified full member of Acoustical Society of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE), as approved and procured by the Director of Community Development, for the life of the data center use. The Applicant shall provide a point of contact, to be maintained and kept up to date at all times, for the Town to bill for reimbursement of the annual sound test. The Applicant shall reimburse the Town for all costs related to the sound test within 30 days receipt of an invoice for reimbursement.

c. If the use violates § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise, then the Applicant shall have 48 hours to mitigate the violation of the use or the Certificate(s) of Occupancy are automatically suspended and the Applicant shall cease the use until such time that the Applicant can demonstrate the use meets said section of the Zoning Ordinance.

For reference, the Town of Warrenton Zoning Ordinance § 9-14.2 states:

9-14.2 The sound pressure level of sound radiated from an establishment, measured at the lot line of the site thereof that is the nearest thereto, shall not exceed the values in any octave band of frequency that are specified in Table 9-1 below, or in Table 9-1 as modified by the correction factors set forth in Table 9-2. The sound pressure level shall be measured with a sound level meter and an associated octave band analyzer conforming to standards prescribed by the American National Standards Institute.

Table 9-1 Maximum Permissible Sound Pressure Levels Measured re 0.0002 dyne per CM^2		
Frequency Band Cycles per Second	Along Residential District Boundaries – Maximum Permitted Sound Level In Decibels	At Any Other Point on the Lot Boundary – Maximum Permitted Sound Level In Decibels
63	64	72
125	60	70
250	54	65
500	48	59
1000	42	55
2000	38	51
4000	34	47
8000	30	44

Table 9-2 Correction Factors	
Condition	Correction in Decibels
On a site contiguous to or across a street from the boundary of any R-district established by this chapter.	Minus 5
Operation between the hours of 10:00 p.m. and 7:00 a.m.	Minus 5
Sound of impulsive character (e.g., hammering)	Minus 5
Sound of periodic character (e.g., sawing)	Minus 5
Tone (e.g., hum or screech)	Minus 5
Sound source operated less than:	
20% in any one hour period	Plus 5[1]
5% in any one hour period	Plus 10[1]
1% in any one hour period	Plus 15[1]

1. Apply only one of these corrections. All other corrections (including any one of the footnoted) are cumulative.

18. Lighting: The Applicant shall submit a Lighting Plan pursuant to the provisions of § 9-8 et seq. of the Town of Warrenton Zoning Ordinance in connection with its Site Development Plan. All exterior lighting shall utilize LED and be designed and constructed with cutoff and fully shielded fixtures that direct light downward and into the interior of the property and away from adjacent roads and adjacent properties. All building mounted lighting shall have a maximum height of 25', and the Applicant shall install controls on the site fixtures such that they dim to 50% output between 11 PM and dawn. Freestanding parking lot lights shall be a maximum of 20.'

19. Tree Save: The Applicant shall provide a tree preservation plan at time of Site Plan that seeks to minimize land disturbance and maximize on-site vegetation.

20. Best Management Practices: BMPs shall incorporate aeration for water retention using solar power.

21. Landscaping: The Applicant will follow the Zoning Ordinance Article. In addition, the Applicant will provide double the Town of Warrenton Zoning Ordinance required landscaping requirements (existing and proposed) along the side of the building facing Lee Highway and Blackwell Road with coniferous trees that provide four season visual coverage. All plantings must consist of native, drought tolerant species appropriate for the Town of Warrenton climate.

22. Termination of Use: If the site becomes inactive for 30 consecutive days or for 30 days in any 180-day period, the property owner shall empty all fuel storage tanks and take all other reasonable steps to prevent any soil or water contamination, to the satisfaction of the Town. Within one year of the termination of the use, the owner shall deliver a letter from the Virginia Department of Environmental Quality that certifies that the owner has removed all hazardous materials, underground tanks and pumps, and any environmentally sensitive materials and has ensured that the soils and environmental features of the site are clean and free of hazardous materiasls.

23. Employment Opportunities: The Applicant shall provide outreach to qualified persons residing in the Town of Warrenton who may be interested in employment at the data center through a variety of media such as the conduct of a job fair, the inclusion of a direct link to potential opportunities on the Town website, or on other websites for the purpose. Such outreach shall be made reasonably in advance of the construction of the Project so that interested persons may make application for positions, not less than six months prior to the anticipated completion of construction.

24. Programs for Local Schools: The Applicant shall ensure coordination by the appropriate Amazon personnel with the Town of Warrenton and the Fauquier County School Division regarding the establishment and maintenance of educational programs in the K-12 grades, and with Laurel Ridge Community College, to establish and maintain workforce development programs for career pathways in data center construction and operations, and such other programs as the parties may deem mutually beneficial.

25. Violation of Conditions: Violation of any of the conditions of this SUP may result in appropriate enforcement action by the Town, including issuance of a Notice of Violation and Corrective Order and, after notice and an opportunity to be heard, revocation of the SUP. This statement does not limit the remedies of the Town in the event of a violation of the conditions in this SUP nor does it imply any limitation in the Town's enforcement of conditions in unrelated SUP's.

Exhibit 2:
Site Plan Approval
April 18, 2024

TOWN OF WARRENTON
Community Development Department
PO BOX 341
WARRENTON, VIRGINIA 20188
http://www.warrentonva.gov
LandDevelopment@warrentona.gov
(540) 347-2405

SITE PLAN APPROVAL

April 18, 2024

Project Name	Warrenton Data Center
Project Number	SDP-2023-6
Location	719 Blackwell Road (6984-69-2419-000)
Use	Data Center per Zoning Ordinance Section 3-4.12.3
Zoning	Industrial (I)

Engineer/Applicant Representative	**Owner**
John Wright, P.E. Bohler Engineering 28 Blackwell Park Lane, Suite 201 Warrenton, VA 20186 jwright@bohlerengineering.com	Michael Gore Amazon Data Services, Inc. 410 Terry Ave., N. Seattle, WA 98109 C/o jonnorg@amazon.com

CONDITIONS OF APPROVAL

1. Development of the subject property shall conform to all notes and design layouts on the approved plan. This approval shall be for this Site Plan only; any change or increase in use or intensity may require the submittal of a new or amended site plan.
2. Development and use of the property is subject to all conditions of approval as associated with the Special Use Permit, case number SUP-22-3, as approved by Town Council on February 14, 2023.
3. Any revisions or changes to the site conditions depicted within this Site Development Plan shall require the submission and approval of a Site Development Plan Amendment. This shall include any necessary modifications to the electrical service to the property, including but not limited to, off-site distribution or service lines.
4. Electrical service lines that serve the data center facility and any other accessory or appurtenant structure or use within the property boundaries must be located underground from the substation that serves the facility to the subject property per Special Use Permit #22-3 approval condition #5. Proof of conformance with this condition shall be provided to the Zoning Administrator for review and concurrence prior to the issuance of any Certificate of Occupancy and/or commencement of the data center use.
5. Public water shall not be used for the general purposes of cooling the data center, but may be used for the initial charging of the cooling system. The property owner and/or site operator shall consult with the Director of Public Works and the Director of Public Utilities to the scheduling of the initial charging of the system per Special Use Permit approval condition #14.
6. A noise study must be provided for each phase of construction to demonstrate compliance with Article 9-14.2 of the Ordinance prior to receiving a conditional certificate of occupancy per Special Use Permit approval condition #17a.
7. An annual sound test shall be required and paid for by the property owner and/or site operator for the life of the data center use per Special Use Permit approval condition #17b. This test must be prepared by a qualified full member of the Acoustical Society

of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE), as approved and procured by the Director of Community Development.

8. If at any time the data center use violates Article 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise, then the property owner shall have 48 hours to mitigate the violation of the use or the certificate(s) of occupancy will be automatically suspended and the data center use shall cease until such time that the property owner can demonstrate the use meets said section of the Zoning Ordinance per Special Use Permit approval condition #17c.
9. All exterior lighting shall conform to Section 9-8 of the Ordinance; all lights shall consist of fully-sheilded, full cut-off fixtures, where no light is emitted above a horizontal plane passing through the lowest point of the light-emitting element. All site lighting shall be turned off at the close of business; or, where business hours extend after 11:00 p.m., site lighting shall be reduced by at least 50% from 11:00 p.m. until dawn.
10. Tree preservation areas shall remain in a wooded condition, where no woody vegetation is removed except for periodic maintenance as necessary to remove dead, dying or diseased trees and the removal of noxious and/or invasive plant species. Should necessary maintenance activities remove vegetation so that the buffering and screening function of the wooded area is impacted, replacement vegetation shall be planted by no later than the next suitable planting season, at a replacement rate equal to or greater than the replacement/restoration rates as detailed in Appendix D – Vegetative Replacement Standards, as published in the Buffer Modification and Mitigation Guidance Manual (DCR, 2003).
11. The proposed sewer gas interceptor structure at the building connection, sheet C511, will function as a solids collection tank, and shall be routinely emptied as needed.
12. The temporary construction entrance shall be removed, and the area permanently stabilized, prior to issuance of any certificate of occupancy.
13. A separate Sign Permit is required for all site signage in conformance with Article 6 of the Ordinance.
14. An Easement Plat and Deed is required for this project, as associated with case number ESMT-23-2; proof of recordation must be provided prior to release of this site plan.
15. A Stormwater Management/BMP Maintenance Agreement is required for this project; The Maintenance Agreement must be recorded, and the recordation information provided to Community Development prior to the release of this site plan to authorize construction.
16. A Right-of-Way permit must be obtained from the Department of Public Works prior to the release of this Site Development Plan to authorize construction activities.
17. A separate Zoning Permit is required prior to the placement of a temporary construction trailer(s). Any temporary trailer or other construction-related support infrastructure must be removed prior to the issuance of any certificate of occupancy for the data center facility.
18. Nutrient credit purchase equivalent to a minimum of **7.50 lb/yr TP** is required for this project; a certified letter of nutrient credit purchase is required prior to release of this Site Development Plan for construction.
19. A Bond in the amount of **$2,869,834.78** is required for this project in conformance with Section 10-8 of the Ordinance; the Bond must be provided prior to release of this site plan.

20. A Land Disturbance permit is required for this project. A complete application for a Land Disturbance Permit must be submitted for review and approval to include:
    - A Land Disturbance Permit Application
    - A Registration Statement for a State General Permit for Stormwater Management
    - A Stormwater Pollution Prevention Plan (SWPPP)
    - Offsite soil tracking forms
    - Copy of the recorded Stormwater Management Maintenance Agreement.
    - Copy of a certified nutrient credit purchase of no less than 7.50 lb/yr TP.
    - Land Disturbance Permit Fee

21. A registration statement must be provided. The applicant should be aware of timing for the state permit application, if submittal for land disturbance permit is received prior to June 30, 2024, submittal will be required for the 2019 and 2024 registration statement to be covered for the new 2024 permit cycle. The stormwater fee of **$4,500.00**, based on the total disturbed acreage of 32.90 acres, must be provided with the registration statement.
22. A Pre-Construction meeting is required prior to commencement of any on-site work or land disturbance activity; Please contact Kerry Wharton, Stormwater Administrator, at kwharton@warrentonva.gov or 540-347-1101 extension 135.
23. Any off-site land disturbance requires evidence of agreement by the adjoining property owner(s), to consist of a signed and notarized letter of permission, to include an exhibit that demonstrates the location and extents of any work.
24. An As-Built Plan is required for this project. The As-Built Plan must be submitted within one year of issuance of the first occupancy permit for review and approval. Final approval of the As-Built Plan is required prior to the final release of the Bond per Section 10-9 of the Ordinance.
25. Closed-Circuit TV video of the sanitary sewer system (including laterals and sanitary mains) shall be submitted to and approved by the Utilities Department in a .mpg format compatible with Windows Media Player prior to bond release. The documenting video media shall be recorded in compliance with NASSCO & PACP standards.
26. A final Zoning inspection is required prior to the issuance of any Certificate of Occupancy. Please contact Zoning at 540-347-1101 to schedule the inspection at least two weeks prior to the anticipated commencement of the use.
27. The approval of the subject site plan shall expire five (5) years after the date of approval unless building permits have been obtained for construction, per 10-7.8 of the Zoning Ordinance.

Remainder of page purposely left blank

ZONING ADMINISTRATOR APPROVAL:	
This Site Development Plan is approved subject to all conditions and requirements noted above.	
ZONING ADMINISTRATOR SIGNATURE:	**DATE:**
Heather Jenkins	4-18-2024

CONDITIONS OF RELEASE:

NOTE: Site work/construction cannot commence until the site plan has been released!

- The Easement Plat (ESMT-23-2) must be recorded.
- The Stormwater Management/BMP Maintenance Agreement must be recorded.
- Nutrient Credit Purchase letter must be provided.
- The Bond must be provided.
- The Right-of-Way Permit must be issued.
- The Land Disturbance Permit must be issued.

THIS SITE DEVELOPMENT PLAN HAS BEEN RELEASED:	
STAFF SIGNATURE:	**DATE:**

SPECIAL USE PERMIT CONDITIONS OF APPROVAL
Applicant: AMAZON DATA SERVICES, INC. (the "Applicant")
Owner: AMAZON DATA SERVICES, INC.
SUP2022-0003, Amazon Data Center
PIN # 6984-69-2419 (the "Property")
Special Use Permit Area: ± 41.79 acres
Zoning: INDUSTRIAL (I)
Date: February 14, 2023

In approving a Special Use Permit, the Town Council may impose such conditions, safeguards, and restrictions as may be necessary to avoid, minimize, or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance. The Council may require a guarantee or bond to ensure that compliance with the imposed conditions. All required conditions shall be set out in the documentation approving the Special Use Permit (SUP). These conditions shall run with the land so as to bind future landowners. Any party or officer identified by title shall mean and include any successor to that person or entity's powers or responsibilities.

1. Site Development: The Property shall be developed in substantial conformance with these conditions and the Special Use Permit Plan entitled, "Special Use Permit Plan for Amazon Data Services, Inc.," prepared by Bohler Engineering, dated July 10, 2022 and revised through January 10, 2023, and consisting of 3 sheets, subject to minor modifications approved by the Town in connection with final Site Plan review and final engineering, and except as otherwise provided in these Conditions (the "SUP Plan"). The building and other structures to be constructed on the Property are referred to herein as the "Facility."

2. Site Plan: The Applicant shall produce a site development plan that delineates the external noise emitting equipment that is to be installed and activated at each phase of the building. No phase or set of phases will begin operation until the Town has issued a conditional Certificate of Occupancy for such phase or phases. A final Certificate of Occupancy will be granted upon completion of all phases.

3. Use Parameters. Use Limitation: The use approved with this SUP shall be limited to a data center as set forth in § 3-4.12.3 of the Town of Warrenton Zoning Ordinance.

4. Electric Substation: There shall be no electric substation constructed on the Property.

5. Undergrounding of Electrical Lines from a Substation to the Facility: Pursuant to Warrenton Zoning Ordinance § 9-26.1(C), the distribution lines from the off-site substation serving the data center are required to be underground. Applicant will ensure payment of the undergrounding of these distribution lines with the utility company in accordance with its requirements.

6. Building Design and Elevations:

    a. The architectural design of the data center shall substantially conform to

the "Illustrative Building Elevations"; prepared by Corgan; February 14, 2023". The Elevations shall be subject to minor modification approved by the Town in connection with Site Plan review. Additional changes to the design and materials may be made provided that any such changes are approved by the Director of Community Development prior to the issuance of a building permit.

b. At time of Site Plan, the Applicant shall provide all elevations for the building in compliance with the Town of Warrenton Zoning Ordinance Article 9-26.1.F. In addition, the Applicant shall orient the building along Lee Highway to reduce the visible impact using architectural details such as a perceived reduction in massing and scale, fenestration and windows, exterior colors and materials, overhangs, canopy or porticos, recesses and/or projections, arcade, raised corniced parapets, and varying roof lines.

c. The Facility shall be no greater than 37 feet in height, as that term is defined in the Town Zoning Ordinance. The mechanical equipment installed on the roof of the building shall be screened.

d. Noise mitigation measures, including but not limited to, silencers, sound walls, acoustical wraps, and/or low noise equipment, shall be utilized to meet § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise.

7. Signage: There shall be no signage except for a street address; provided that if any further signage is sought it shall comply with applicable sign ordinance requirements.

8. Fencing: All fencing on the Property shall be as depicted on the SUP Plan, and shall not exceed 8 feet in height. Security fencing shall be the style and type as shown on Page 2 of the Special Use Permit Plan produced by Bohler dated July 10, 2022 and updated through October 28, 2022. Chain link fencing, with or without slatted inserts, and/or barbed wire or other similar visible deterrence devices shall not be permitted where visible from the public.

9. External Fuel Storage Tanks: The Applicant shall install above-ground double-walled fuel tanks that meet the definition of secondary containment under the DEQ LPR-SRR-2019-03 - Storage Tank Program Compliance Manual, Volume V - AST Guidance, and pursuant to 40 CFR Part 112, Section 8.1.2.2, in the general locations shown on the SUP Plan, for the storage of fuel supplies necessary to maintain an Uninterruptible Power Supply in the event of a loss of external electrical power.

10. Parking: The Applicant shall provide not fewer than 56 parking spaces as shown on the SUP Plan, one of which shall be a loading space.

11. Site Maintenance: The Applicant shall maintain the Property in a clean and orderly manner, and shall provide an on-site masonry screened refuse container station in the location generally shown on the SUP Plan.

12. Access: Access to the site shall be provided as shown on the SUP Plan, subject to changes approved by the Town in consultation with the Virginia Department of Transportation. Mountable curbs shall be provided as required by the Town. There shall be no access from either Routes 17 or 29.

13. Access for Town Staff: The Town is obliged to report annually to the Virginia Department of Environmental Quality as to the ongoing operation and maintenance of stormwater management facilities installed on the Property. The Applicant shall provide the Town Manager with an on-site employee who shall serve as the sole point of contact for arranging access to the Property for the Town's conduct of such inspections, and shall keep that point of contact current at all times.

14. Water & Public Sewer Connection: The Property shall connect to public water and public sewer at the Applicant's expense. The Applicant shall limit its water use to internal domestic uses such as service to bathrooms, kitchens, humidification, and external irrigation. It shall not use public water for the general purposes of cooling the data center but may use it for the initial charging of the cooling system. It shall consult with the Director of the Department of Public Works and Utilities as to the scheduling of the initial charging of the system so as to minimize the impact on the Town's water system. This condition does not exclude or prevent the property owner from utilizing the Town's water for fire suppression.

15. Emergency Services:

    a. The Applicant shall coordinate training between the Town's fire and rescue companies and those other companies and departments that have experience with data centers after commencement of operations at the Property and when convenient for the Town's first responders. Furthermore, upon commencement of operations at the Property, the Applicant will provide the Town's first responders its "Data Center Response Manual" for use in training for emergencies at its Facility, and shall assist in advising those first responders how to implement its provisions.

    b. The Applicant shall assure that the water line systems at the Facility have sufficient fire flows, as determined by the Town Fire Marshal.

    c. The Applicant shall maintain Facility security personnel 24 hours a day, and each day of the year.

16. Pedestrian access: The Applicant shall construct a five-foot sidewalk on the east side of Blackwell Road along its frontage on that Road.

17. Noise:

a. Each phase shall receive a conditional Certificate of Occupancy upon demonstrating conformance with the requirements of § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise. The Applicant shall provide and pay for a third-party sound test prepared by a qualified full member of Acoustical Society of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE), as approved by the Director of Community Development. The purpose of such test is to demonstrate the operation of each distinct phase as noted in Condition #2 after completion of the construction and prior to the issuance of the conditional Certificate of Occupancy. If the test finds the use does not meet § 9-14.2 of the Town of Warrenton Zoning Ordinance, then there shall be no commencement of use for that phase and no conditional Certificate of Occupancy shall be issued.

b. The Applicant shall pay for an annual sound test prepared by a qualified full member of Acoustical Society of America (ASA) or a Board Certified member of the Institute of Noise Control Engineering (INCE), as approved and procured by the Director of Community Development, for the life of the data center use. The Applicant shall provide a point of contact, to be maintained and kept up to date at all times, for the Town to bill for reimbursement of the annual sound test. The Applicant shall reimburse the Town for all costs related to the sound test within 30 days receipt of an invoice for reimbursement.

c. If the use violates § 9-14.2 of the Town of Warrenton Zoning Ordinance relating to noise, then the Applicant shall have 48 hours to mitigate the violation of the use or the Certificate(s) of Occupancy are automatically suspended and the Applicant shall cease the use until such time that the Applicant can demonstrate the use meets said section of the Zoning Ordinance.

For reference, the Town of Warrenton Zoning Ordinance § 9-14.2 states:

9-14.2 The sound pressure level of sound radiated from an establishment, measured at the lot line of the site thereof that is the nearest thereto, shall not exceed the values in any octave band of frequency that are specified in Table 9-1 below, or in Table 9-1 as modified by the correction factors set forth in Table 9-2. The sound pressure level shall be measured with a sound level meter and an associated octave band analyzer conforming to standards prescribed by the American National Standards Institute.

Table 9-1 Maximum Permissible Sound Pressure Levels Measured re 0.0002 dyne per CM^2		
Frequency Band Cycles per Second	Along Residential District Boundaries – Maximum Permitted Sound Level In Decibels	At Any Other Point on the Lot Boundary – Maximum Permitted Sound Level In Decibels
63	64	72
125	60	70
250	54	65
500	48	59
1000	42	55
2000	38	51
4000	34	47
8000	30	44

Table 9-2 Correction Factors	
Condition	Correction in Decibels
On a site contiguous to or across a street from the boundary of any R-district established by this chapter.	Minus 5
Operation between the hours of 10:00 p.m. and 7:00 a.m.	Minus 5
Sound of impulsive character (e.g., hammering)	Minus 5
Sound of periodic character (e.g., sawing)	Minus 5
Tone (e.g., hum or screech)	Minus 5
Sound source operated less than:	
20% in any one hour period	Plus 5[1]
5% in any one hour period	Plus 10[1]
1% in any one hour period	Plus 15[1]

1. Apply only one of these corrections. All other corrections (including any one of the footnoted) are cumulative.

18. Lighting: The Applicant shall submit a Lighting Plan pursuant to the provisions of § 9-8 et seq. of the Town of Warrenton Zoning Ordinance in connection with its Site Development Plan. All exterior lighting shall utilize LED and be designed and constructed with cutoff and fully shielded fixtures that direct light downward and into the interior of the property and away from adjacent roads and adjacent properties. All building mounted lighting shall have a maximum height of 25', and the Applicant shall install controls on the site fixtures such that they dim to 50% output between 11 PM and dawn. Freestanding parking lot lights shall be a maximum of 20.'

19. Tree Save: The Applicant shall provide a tree preservation plan at time of Site Plan that seeks to minimize land disturbance and maximize on-site vegetation.

20. Best Management Practices: BMPs shall incorporate aeration for water retention using solar power.

21. Landscaping: The Applicant will follow the Zoning Ordinance Article. In addition, the Applicant will provide double the Town of Warrenton Zoning Ordinance required landscaping requirements (existing and proposed) along the side of the building facing Lee Highway and Blackwell Road with coniferous trees that provide four season visual coverage. All plantings must consist of native, drought tolerant species appropriate for the Town of Warrenton climate.

22. Termination of Use: If the site becomes inactive for 30 consecutive days or for 30 days in any 180-day period, the property owner shall empty all fuel storage tanks and take all other reasonable steps to prevent any soil or water contamination, to the satisfaction of the Town. Within one year of the termination of the use, the owner shall deliver a letter from the Virginia Department of Environmental Quality that certifies that the owner has removed all hazardous materials, underground tanks and pumps, and any environmentally sensitive materials and has ensured that the soils and environmental features of the site are clean and free of hazardous materiasls.

23. Employment Opportunities: The Applicant shall provide outreach to qualified persons residing in the Town of Warrenton who may be interested in employment at the data center through a variety of media such as the conduct of a job fair, the inclusion of a direct link to potential opportunities on the Town website, or on other websites for the purpose. Such outreach shall be made reasonably in advance of the construction of the Project so that interested persons may make application for positions, not less than six months prior to the anticipated completion of construction.

24. Programs for Local Schools: The Applicant shall ensure coordination by the appropriate Amazon personnel with the Town of Warrenton and the Fauquier County School Division regarding the establishment and maintenance of educational programs in the K-12 grades, and with Laurel Ridge Community College, to establish and maintain workforce development programs for career pathways in data center construction and operations, and such other programs as the parties may deem mutually beneficial.

25. Violation of Conditions: Violation of any of the conditions of this SUP may result in appropriate enforcement action by the Town, including issuance of a Notice of Violation and Corrective Order and, after notice and an opportunity to be heard, revocation of the SUP. This statement does not limit the remedies of the Town in the event of a violation of the conditions in this SUP nor does it imply any limitation in the Town's enforcement of conditions in unrelated SUP's.

SIDLEY

SIDLEY AUSTIN LLP
1501 K STREET, N.W.
WASHINGTON, DISTRICT OF COLUMBIA 20005
+1 202 736 8000
+1 202 736 8711 FAX

+1 202 736 8760
GTODD@SIDLEY.COM

January 30, 2026

VIA FEDEX, E-MAIL, AND HAND DELIVERY

Fauquier County Board of Zoning Appeals
c/o Heather E. Jenkins
Zoning Administrator & Secretary to the Board
PO Box 341
Warrenton, Virginia 20188

c/o Melea Maybach
Chair
Town of Warrenton Board of Zoning Appeals
21 Main Street
Warrenton, VA 20186

Re: BZA-25-3 Appeal from Zoning Administrator's Determination of Vested Rights

Dear Ms. Jenkins, Chair Maybach, and Members of the Board of Zoning Appeals:

I write in response to the January 27, 2026 letter submitted by Michael H. Brady. Mr. Brady represents several citizens in a separate lawsuit pending in a different forum involving issues not before this Board (the "Circuit Court Action"). However, as his eleventh-hour submission contains a number of legal and factual inaccuracies, I write to set the record straight. I ask that this letter be added to the record for the above-captioned BZA appeal.

EXECUTIVE SUMMARY

Mr. Brady, and his clients, as non-parties, have no standing to move the Board to defer or dismiss this appeal. Their comments are appropriately treated as any other citizen commentator. Mr. Brady's letter proposes improperly that the Board take up and consider issues not properly before it in this appeal. Mr. Brady's letter mischaracterizes Amazon's Petition in a number of respects, most notably as to the bases for Amazon's vested rights petition. His letter similarly mischaracterizes the pending Circuit Court Action, which concerns different issues than this appeal. The Circuit Court does not have before it the statutory vested rights claims at issue here, and the Circuit Court's Consent Order is in no way inconsistent with this proceeding. Mr. Brady is also wrong that his prior appeals to the BZA somehow prevented Amazon's rights from vesting, and he is equally incorrect that Amazon could not have and did not proceed with good faith. While Mr. Brady's argument relies on law from other States, Amazon readily satisfies applicable Virginia law. For all these reasons, the BZA should focus on and adjudicate the issues laid before it by Amazon.

Sidley Austin (DC) LLP is a Delaware limited liability partnership doing business as Sidley Austin LLP and practicing in affiliation with other Sidley Austin partnerships.

DISCUSSION

To start, as Mr. Brady forthrightly notes, neither he nor his clients are parties to this appeal, as they are not persons "aggrieved" by the determination of the Zoning Administrator as required by Virginia Code § 15.2-2311(A). As such, they lack standing to appear before the Board or to make any demands of it in this proceeding. Mr. Brady incorrectly cites Virginia Code § 15.2-2314, which regards certiorari actions to the Circuit Court, not appeals to a Board of Zoning Appeals. Whether his clients might be aggrieved by some action of this Board in the future, entitling them to file a court action, does not allow them to bootstrap their way into this appeal. The Board's Notice concerning the February 3 hearing notes properly that this will be a public meeting, not a public hearing, and provides the correct way for interested members of the community to submit their comments. Mr. Brady's submission should be treated as any other Citizen comment, and his motion for denial or continuance should be put aside as improper.

In all events, most—if not all—of the arguments raised in Mr. Brady's letter have already been raised by the Town's able counsel in his response to Amazon's petition. To suggest that the BZA must halt because it cannot properly appreciate the full weight of these points is misplaced: this Board is more than capable of adjudicating the issues actually before it and putting aside those that are not.

Amazon offers the following responses to the substance of Mr. Brady's letter:

First, Mr. Brady seeks to raise legal issues that are simply not before the BZA in these proceedings. The only question that Amazon has put to the BZA is whether the Zoning Administrator erred in rejecting Amazon's contention that it has a vested right to proceed with its approved project under the prior zoning ordinance (which was amended in July of 2025 to eliminate data centers as an approved use in the Industrial Zoning District) or the Site Development Plan on account of significant governmental actions taken by the Town and good faith reliance on those actions by Amazon. Neither the legality of the 2021 Zoning Ordinance Text Amendment ("ZOTA"), nor the validity of the 2023 Special Use Permit ("SUP"), nor any other action of the Town is before the BZA. Those issues will be determined in the Circuit Court Action or elsewhere.

Second, Mr. Brady spends significant time on a strawman argument: that passage of the 2021 ZOTA and actions purportedly taken in reliance on it, such as purchase of the Blackwell Road property, do not support a vested rights claim. But Amazon has never made such a claim. We have been consistent and clear that the significant governmental actions upon which Amazon relies are approval of the SUP and the Site Plan. And, we have been equally clear that Amazon's reliance claim rests on actions taken after the February 14, 2023 approval of the Special Use Permit and prior to the July 8, 2025 entry of the Consent Order in the Circuit Court Action.

Third, Mr. Brady mischaracterizes the Circuit Court Action in several material respects. The Circuit Court dismissed most of Mr. Brady's clients' claims, leaving for trial only the contention that the SUP should be invalidated on the basis that the underlying ZOTA was *void ab initio*. Mr. Brady is incorrect that Amazon has raised its vested rights claim in the Circuit Court Action. Not only has Amazon not done so; it *could not have done so*. Virginia Code § 15.2-2307 protects a landowner against a subsequent change in the zoning ordinance where it obtains approval of a significant affirmative governmental act such as a Special Use Permit or a Site Plan and relies and makes investments in good faith. Here, the Town did not amend its zoning ordinance to remove the relevant data center use until July 2025. Had the Town not amended its Zoning Ordinance in July 2025, Amazon would have had no reason to seek the determination that is the subject of this BZA proceeding. Similarly, Virginia Code § 15.2-2311(C) insulates zoning determinations from later change after 60 days, again where the landowner has detrimentally relied in good faith. Amazon could not have raised this statute at all in the Circuit Court Action since it applies specifically in BZA appeals. And in no event could Amazon have pled either of these statutory vested rights as affirmative defenses in the Circuit Court Action in March 2024, when its full slate of defenses was due, before either of them even arose.

The affirmative defense to which Mr. Brady refers is not one of these statutory vested rights claims, but rather a common law doctrine that operates as a common sense limit on the impact of a later determination that a legislative action, such as the 2021 ZOTA, was *void ab initio*. As Amazon has pled in the Circuit Court Action, and will demonstrate at trial in March, there is an exception to the *void ab initio* doctrine where a party relies in good faith, but to its detriment, on the validity of a law. Here, Amazon relied in good faith on the ZOTA, which went unchallenged until Mr. Brady filed his clients' suit in 2023 after approval of the SUP. And to be clear, as noted above, the lawfulness of the ZOTA is not before this Board, but rather will be determined by the Circuit Court after trial in March. The authority Mr. Brady cites, *Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566 (Va. 2019), holds that once a party seeks a vested rights determination from a zoning administrator, it must pursue the administrative process through to its conclusion or lose its right to proceed to Circuit Court. It says nothing about a party's ability to raise different legal doctrines in different proceedings concerning different issues.

Mr. Brady also contends at length that Amazon's request for a vested rights determination violates a Consent Order entered in the Circuit Court Action, going so far as to accuse Amazon of having acted in "contempt" of court. That claim is frivolous. However, given the last-minute nature of his allegations, Mr. Brady knows full well that the Circuit Court will have no opportunity to address and dispense with it prior to the February 3 hearing. The Board should not be distracted by such misplaced, heated rhetoric.

Moreover, and in any event, Amazon's Petition is entirely consistent with the Consent Order. In that Order, which the Court adopted with Amazon's full consent and support, Amazon

agreed not to seek any "further permits or approvals related to the construction of a data center on the Property," or to "otherwise further construction of the data center on the Property," until such time as the litigation concludes. Amazon has done none of those things, and has no intention of doing any of those things. As this Board well knows, a determination of vested rights neither "permits" nor "approves" anything with respect to a particular project; one would neither be required, nor sufficient, for Amazon to proceed with any development efforts. A vested rights determination does not turn on the power, let water flow, authorize construction to begin, reroute traffic, or do any of the other things often required for a significant development. To the contrary, a determination of vested rights simply acknowledges that, at some point in the past, based on past acts and circumstances, the landowner's right to a particular land use or determination "vested." A determination that Amazon has vested rights will not "approv[e] [any] claimed right to further construction of the data center on the Property," as the Citizens suggest. It will simply recognize what has already occurred in the past. Indeed, the Order plainly states its purpose of "maintaining the status quo." Brady Ltr Ex. 1 at 1. If Amazon is correct that its rights vested *prior to* the January 14, 2025 Consent Order, then recognition of those rights, not derogation of them, *is* the status quo.

Fourth, Mr. Brady is also wrong that his clients' prior appeals to the Board in May and June 2024 stayed Amazon's Site Development Plan, meaning that Amazon could no longer rely on it in good faith. For one, a BZA may exercise only its statutorily conferred jurisdiction, *Lake George Corp. v. Standing*, 211 Va. 733, 734 (1971), and the referenced attempted appeals are not within its ambit. Indeed, "Title 15.2, Chapter 22, Article 6, is replete with express grants of powers to local governing bodies and their authorized agents to administer and enforce their own . . . regulations," but nowhere in it does it grant the right of a third party to challenge the approval of a site plan. *Shilling v. Jimenez*, 268 Va. 202, 204 (Va. 2004); *and see id.* (holding in a similar context that legislative intent makes clear third parties have no private right of appeal to the Circuit Court). Accordingly, there is no qualifying appeal to this body on which any stay of proceedings could be predicated.

In addition, and more fundamentally, Virginia Code § 15.2-2311(B) stays only proceedings "in furtherance of the action appealed." Amazon's Petition is not a proceeding "in furtherance of" the Site Development Plan. It does not modify, amend, act on, or in any other way impact or implement the substance of the Site Development Plan. The only question before the Board is whether Amazon's rights vested at some point in the past to protect it against the July 2025 amendment to the Zoning Ordinance. Lastly, and in any event, even if Mr. Brady was correct—and he is not—then a stay would run only from May 17, 2024, by which time Amazon's rights had already vested. And he cites nothing to support the proposition that rights once vested can be unvested.

Fifth, and lastly, Mr. Brady devotes the bulk of his letter to the proposition that Amazon could not have relied in good faith on governmental acts, on account of his clients' known hostility

to the project, lengthy and contentious Town Council meetings, and ultimately the filing of his lawsuit. As we foreshadowed in our November 24, 2025 petition, this reduces to nothing more than a heckler's veto over any and all significant development projects, and is not the law.

Mr. Brady contends that, once on notice of objections to the legality of a governmental action such as a Special Use Permit or Site Plan approval, or during the time that such actions are still subject to challenge, a landowner cannot rely on them for vested rights purposes "in good faith." In making this argument, Mr. Brady lightly and tellingly skips past Virginia law, and relies instead on judicial decisions from a number of other states. Brady Ltr. at 7–10. But the decisions from courts in Wyoming, Nebraska, New Hampshire, Maine, Maryland, North Carolina, and Pennsylvania all differ from Virginia law in one critical respect. None of them concerned statutorily enacted vested rights protections. Rather, they all apply the common law doctrine of vested rights, which is substantially less protective of landowners' rights. Indeed, the Virginia Supreme Court held historically "that a landowner had no rights in a building permit that was issued in violation of applicable zoning ordinances." *Board of Supervisors of Richmond v. Rhoads*, 294 Va. 43, 50 (Va. 2017)*; see, e.g.*, *Town of Blacksburg v. Price*, 221 Va. 168, 170-71 (Va. 1980) (finding that a building permit contrary to zoning ordinance was "*void ab initio*" and "no vested rights were acquired"); *WANV, Inc. v. Houff*, 219 Va. 57, 63-64 (Va. 1978) (finding that a building permit issued in violation of the zoning ordinance is "void"); *Segaloff v. City of Newport News*, 209 Va. 259, 261-62 (Va. 1968) (same). But decisions of that sort pre-date enactment of statutory protections. As the Court further noted in *Rhoads*:

> [I]n 1995, the General Assembly enacted the "vested rights" provision currently codified in Code § 15.2-2311(C). 1995 Acts ch. 424. The plain language of Code § 15.2-2311(C) indicates that the statute is intended to eliminate the hardship property owners have suffered when they rely to their detriment upon erroneous or void zoning decisions.

294 Va. at 51. What is more, such statutes are "remedial" and must be "liberally construed" to achieve their purpose of protecting landowners who otherwise rely in good faith on zoning laws to their detriment. *Id.* In other words, the General Assembly purposefully put aside the older and substantially more draconian rules followed in common laws states, and replaced it with a more protective statutory scheme.

Turning to the text of the statutes, which Mr. Brady elides, neither § 15.2-2307 nor § 15.2-2311(C) restricts its scope to reliance on governmental acts and decisions that have not been criticized, castigated, attacked, the subject of lengthy and contentious public meetings, or challenged in court. Rather, the only restriction as to the governmental action is that it "remains in effect," § 15.2-2307, or that "60 days have elapsed," § 15.2-2311(C). The General Assembly certainly could have included any of the restrictions Mr. Brady finds in decisions from other jurisdictions, but it did not. Despite the absence of any supporting language, Mr. Brady contends

that filing the Circuit Court Action had the effect of enjoining Amazon's ability to rely in good faith on the Town's various actions. But Virginia law is directly to the contrary. In Virginia, "[t]he pendency of any action at law or suit in equity brought merely to obtain a declaration of rights or a determination of a question of construction shall not be sufficient grounds for the granting of any injunction." Virginia Code § 8.01.189.

Lastly, Mr. Brady is also incorrect in asserting that no Virginia court has passed on the meaning of good faith in the vested rights context. To the contrary, the Court of Appeals took up and addressed that very question less than a year ago in *Board of Supervisors v. Bowman*, where it defined the "good faith" necessary to support a claim for vested rights as a "material[] change [in] position in an honest dependence on the legality of the zoning action and without the intent to defraud, deceive or to obtain an unconscionable advantage." 2025 WL 1033993, at *6 (Va. Ct. App. Apr. 8, 2025). Good faith, it expanded, means a "'state of mind consisting [of] honesty in belief or purpose' or the 'absence of the intent to defraud or seek an unconscionable advantage.'" *Id.* (quoting *Black's Law Dict.* (11th ed. 2019)).

Virginia law applies this same concept of good faith in other contexts. *See, e.g.,* Va. Code § 8.1A-201(b)(20) (defining "good faith" in the UCC context as "honesty in fact in the conduct or transaction concerned"); *Rafalko v. Georgiadis*, 290 Va. 384, 398 (Va. 2015) (in the context of whether trustee's decision was in good faith, "A person acts in good faith when he or she acts with honest motives") (citing *Webster's Third New Int'l Dict.* 978 (1993); *Black's Law Dict.* 808 (10th ed. 2014)); *Stoots v. Marion Life Saving Crew, Inc.*, 300 Va. 354, 366 (Va. 2021) (in context of the Good Samaritan statute, "a person acts in good faith when he or she acts with honest motives"); *Muhammad v. Fatehi*, 80 Va. App. 157, 166 (Va. Ct. App. 2024) (in the context of sanctions, defining good faith as "'a state of mind consisting in . . . honesty in belief or purpose' . . . '[A] state of mind indicating honesty and lawfulness of purpose' or 'belief in one's legal title or right.'") (quoting, respectively, *Good Faith, Black's Law Dict.* (11th ed. 2019); *Good Faith, Webster's Third New Int'l Dict.* (2002); and Va. Code § 8.1A-201(b)(20)).

Thus, in Virginia, good faith goes to whether a party acted honestly or fraudulently, with clear purpose or ill-intent. Nothing in the vested rights statutes, the cases construing them, or Virginia law more generally endorses the notion that public opposition—or even the filing of lawsuits—preempts a party's good faith when that party has an honest belief in the merits of its position and in the legality of the governmental act relied upon. Indeed, a good faith rule only becomes legally relevant when a thing relied upon turns out to have been wrong or invalid.

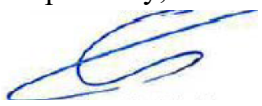
This understanding of good faith makes tremendous sense, particularly in the context of significant development projects. Most large projects, from factories to business parks to data centers, are subject to some public opposition. Projects undergo multiple rounds of review; are often the subject of town halls, working sessions, and public meetings; and are frequently the

subject of well-funded, well-organized, and highly motivated opposition—sometimes local, and sometimes not. And after all this, municipalities make decisions about whether to move forward with a project, issue a permit, and so forth. If it were the law, as Mr. Brady suggests, that opposition to a project is sufficient to preempt good faith reliance, then virtually no developer would ever be able to take advantage of Virginia's vested rights statutes.

Properly understood, there is no doubt that Amazon here acted in good faith. After benefiting from the Town's and Zoning Administrator's determinations, Amazon began and continued its significant investment in the project. That included not only work at the site, as well as entering long term contractual commitments for the project, but also investing in the community. Amazon entertained public input and made significant changes to the project, including adapting the building design and committing to permanent sound testing. At all times, Amazon acted honestly and without intent to defraud, deceive, or obtain an unconscionable advantage, and with a belief in its right to develop the property in accordance with approvals obtained from the Town. *Accord Robertson v. Commonwealth*, 12 Va. App. 854, 856–57 (Va. Ct. App. 1991) (applying presumption of regularity "that public officers have properly discharged their official duties."). There is simply no evidence that any of this was fraudulent, deceitful, or the callous "race" Mr. Brady suggests. Amazon amply meets this standard for good faith reliance.

I look forward to discussing these issues with you in more detail on February 3.

Respectfully,



Gordon D. Todd
Counsel to Amazon Data Services, Inc.

From:	Brady, Michael H.
To:	BZA; Heather Jenkins; mcrist@macpllc.net
Cc:	Todd, Gordon D.; Westover, Matthew; Chap Petersen; Philip Strother; Hay, Daniel; Rose, Emily A.; Scheper, Abby; Mullen, Dale G.; DiStanislao, Thomas; Byrd, Nicole; Wagner, Chandra; Shaia, Lauren
Subject:	BZA Appeal 25-3 - Town of Warrenton Board of Zoning Appeals
Date:	Tuesday, January 27, 2026 3:43:20 PM
Attachments:	2026.1.27 - Citizens" Letter to BZA.pdf Ex. 1 - Consent Order - 1.14.25.pdf Ex. 2 - Prince William Times News Article - 8.1.22.pdf Ex. 3 - Data Center Resolution - 4.13.21.pdf Ex. 4 - Fauquier Now News Article - 2.15.2023.pdf Ex. 5 - E-mails between J. Foote and Town - 2.16-27.23.pdf Ex. 6 - Order Overruling Pleas in Bar & Demurrers to Counts I and II - 2.27.24.pdf Ex. 7 - Motion to Defer Citizens" BZA Appeal - 3.04.25.pdf

---

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Ms. Jenkins,

Good afternoon! I hope you are well on this snowy Tuesday.

I am writing to you in your capacity as Secretary to the Town of Warrenton Board of Zoning Appeals (BZA), to provide the attached materials on behalf of my clients in connection with the above-referenced appeal. Eight (8) paper copies of these materials were filed by hand today with the Department of Community Development.

These materials are provided with the request that they be submitted to the members of the BZA, included in the BZA's official record, and considered in connection with the above-referenced appeal, which is presently scheduled for a hearing on February 3, 2026. Specifically, my clients are requesting that the above-referenced appeal be deferred pending conclusion of the Amazon SUP Case, CL23000128-00, pending in the Circuit Court of Fauquier County, or denied on the ground that Amazon has gained no vested rights, for the reasons more fully explained in the attached materials.

Should you have any questions, please do not hesitate to contact me at the information listed below, where I remain,

Very truly yours,

Michael H. Brady | *Partner & Co-Leader of Appellate Practice*

WHITEFORD

Two James Center | 1021 E. Cary Street, Suite 2001 | Richmond, VA | 23219-4000

t: 804.977.3303 | **f:** 804.762.6864 | **m:** 512.743.9484
Delaware | D.C. | Florida | New York | North Carolina | Kentucky | Maryland | Virginia
mbrady@whitefordlaw.com | www.whitefordlaw.com | Bio

*****Confidentiality*****

This email and any attachments with it are privileged and confidential and are intended solely for the use of the individual(s) to whom they are addressed. If you have received this email in error or are not the addressee, please immediately delete it and notify the sender.

This transmission contains information from the law firm of Whiteford, Taylor & Preston LLP which may be confidential and/or privileged. The information is intended to be for the exclusive use of the planned recipient. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately.

WHITEFORD

Two James Center
1021 East Cary Street, Suite 2001
Richmond, VA 23219-4341
804.977.3300

Michael H. Brady
Partner
804.977.3303
MBrady@whitefordlaw.com

January 27, 2026

VIA EMAIL & HAND DELIVERY
TOWN OF WARRENTON BOARD OF ZONING APPEALS
c/o Heather E. Jenkins, Secretary
Warrenton Department of Community Development
21 Main Street
Warrenton, VA 20188
bza@warrentonva.gov; hjenkins@warrentonva.gov

Re: Amazon's Petition for Appeal from Zoning Administrator's October 24, 2025, Determination, BZA-25-3 ("Amazon's BZA Appeal")

Ms. Maybach and Members of the Board of Zoning Appeals:

I write on behalf of the plaintiffs-petitioners Kevin & Amy Hampton, Patricia Tucker, Scott Wehner, Claudia Dolores Sandoval González, Carlos Ivan Lemus Bojórquez, and the Citizens For Fauquier County (collectively, the "Citizens") in Case No. CL23000128-00 in the Fauquier County Circuit Court, filed in March 2023 ("Amazon SUP Case"). The Petitioner here, Amazon Data Services, Inc. ("Amazon"), as well as the Town of Warrenton and its various officials, including the Zoning Administrator, are parties to the Amazon SUP Case, which will be tried in just over a month, beginning March 9, 2026.

Given the imminence of trial, the existing stay of approvals relating to the data center, and Amazon's earlier assertion of vested rights in the Amazon SUP Case, the BZA should defer proceeding on Amazon's BZA Appeal at this time. If it does proceed, the BZA should affirm the determination that Amazon gained no vested rights by forging ahead in the face of legal challenges.

BACKGROUND & SUMMARY OF ARGUMENT

Much has been written regarding Amazon's BZA Appeal of the Zoning Administrator's October 24, 2025, determination that Amazon does not possess a vested right to a data center use (the "Determination"), one that is presumptively correct. Va. Code § 15.2-2309(1). That said, four points, in the Citizens' judgment, have not been addressed enough: (1) the voidness of SUP 22-3, issued to Amazon on February 15, 2023 (the "Amazon SUP"), and subsequent Site Development Plan Approval, SDP-2023-06 (the "Amazon SDP"); (2) Amazon's knowledge of public opposition to the data center and legal challenge to the Amazon SUP and the Amazon SDP; (3) Amazon's election to adjudicate the question of vested rights before the Circuit Court in the Amazon SUP Case, thus depriving the BZA of jurisdiction over

**Whiteford, Taylor & Preston LLP is a limited liability partnership. Our Delaware offices are operated under a separate Delaware limited liability company, Whiteford, Taylor & Preston LLC*

this appeal; and, following from the others), (4) the lack of any good faith reliance on either the Amazon SUP or the Amazon SDP, which is what Amazon must show to claim vested rights.

Although the Citizens are not a party to Amazon's BZA Appeal, let there be no mistake: a BZA decision reversing the October 24, 2025, determination of Zoning Administrator Jenkins (the "Determination") would affect their rights, and may even prevent them from obtaining any relief from the Amazon SUP Case. That case has been pending since March 16, 2023, has required the investment of substantial resources by the Citizens, and is slated to go to trial on Monday, March 9, 2026, in Fauquier County Circuit Court. Besides being parties to the Amazon SUP Case, the Citizens are also parties to two appeals pending before the BZA since the summer of 2024, BZA-2024-1 and BZA-2024-2, which challenges the Amazon SDP (the "Citizens' BZA Appeals"). Thus, and despite the Citizens not being a party to Amazon's BZA Appeal, an adverse BZA decision would make them "aggrieved" under Virginia Code § 15.2-2314 and entitle them to seek judicial relief.

The Citizens' BZA Appeals of the Amazon SDP were deferred pending resolution of the Amazon SUP Case, a step that may be taken despite the 90-day period in Code § 15.2-2312. *See Tran v. Bd. of Zoning Appeals of Fairfax Cnty.*, 260 Va. 654, 658 (2000) ("[W]e hold that the 90–day time period for appeals in Code § 15.2–2312 is directory rather than mandatory and that the BZA did not lose jurisdiction to render a decision on appeal of the Zoning Administrator's action after 90 days had passed."). The BZA should do the same here, particularly given the imminence of trial in the Amazon SUP Case, which commences March 9, 2026, and the terms of the Consent Order entered by the Circuit Court on January 14, 2025, therein. A copy of the Consent Order entered by Judge James P. Fisher is attached as **Exhibit 1**.

The Consent Order exists precisely to maintain the status quo and prevent Amazon from doing what it is doing here: seeking further approvals or permits from the Town related to the development of the Property while the Circuit Court determines whether the challenged prior approvals are void. Amazon's request for a vested rights determination seeks to effectively moot that litigation through administrative means. The BZA should not agree to assist Amazon in evading the Consent Order or permit itself to be used to interfere with an ongoing court proceeding.

Indeed, the Consent Order, requested and agreed to by Amazon, unambiguously prohibits it from seeking "further permits or approvals related to the construction of a data center on the Property," or "otherwise further construction of the data center on the Property," until a Final Order resolves the above-referenced litigation. It also prohibits the Town of Warrenton from "approv[ing]" any such "permits or approvals." The plain language admits of no exception for determinations under Virginia Code § 15.2-2307. Amazon's July 25, 2025, request of the Zoning Administrator for a vested rights determination, approving its claimed right to further construction of the data center on the Property, and the Petition violate the Consent Order. This violation will be placed before the Circuit Court through a Verified Motion for Rule to Show Cause as soon as the Circuit Court reopens. The BZA should not aid Amazon in violating a court order or subjecting the Town to a finding of contempt while this show cause motion is pending.

For these reasons, the BZA should defer Amazon's BZA Appeal. But those are not the only, or even the most decisive, reasons to refuse proceeding. As explained in Part III below, the Circuit Court of Fauquier County has acquired jurisdiction over the vested rights issue based on Amazon's decision to raise

it as a defense in its Answer in the Amazon SUP Case, filed on March 22, 2024. Having done so, Amazon has elected for that issue to be decided by the Circuit Court and cannot also seek a vested rights determination from the BZA.

Finally, if the BZA does not defer, Amazon's BZA Appeal should be denied, and Amazon found to have no vested rights in the proposed data center use on the Property, which it has pursued in the face of legal challenges to its right to do so and not in "good faith reliance" on any approval, as required by Virginia law, including Virginia Code § 15.2-2307.

What's more, Amazon's conduct belies its efforts to cast itself as a hapless victim of changing political winds. Indeed, Amazon charged ahead without assurances, long before the Amazon SUP was granted—spending nearly $40 million in purchasing the Property—and continued spending despite being apprised of the unlawfulness of the Amazon SUP and the Amazon SDP. Matters of public record demonstrate Amazon was not an unsuspecting party caught unawares, but a sophisticated, determined litigant, cognizant that the Amazon SUP and the Amazon SDP were subject to challenge as unlawful, but determined to moot these challenges by forging ahead. This objective notice of unlawfulness and of risk that these approvals may be set aside undercuts any claim that it "relie[d] in good faith" on the Amazon SUP, the Amazon SDP, or any other approval, and so defeats its vested right claim.

ARGUMENT

I. The Amazon SUP and the Amazon SDP, which Depends on It, Are Void.

The Amazon SUP was issued under zoning amendment ZNG2021-0321, which was approved by the Town Council on August 10, 2021 ("Data Center Zoning Amendment"). This amendment was sought by Amazon, whose counsel assisted in its drafting because, without it, data center uses were not allowed under the Town's Zoning Ordinance. *See* Peter Cary, "Documents reveal developer's role in Warrenton's new zoning rules for data centers," PRINCE WILLIAM TIMES (Aug. 1, 2022), https://www.princewilliamtimes.com/news/documents-reveal-developers-role-in-warrentons-new-zoning-rules-for-data-centers/article_81a66419-370c-5a7e-9919-281ab9775381.html, attached as **Exhibit 2**.

By Virginia Code, this use could be added, but only by complying with a process for initiation, consideration, and adoption. As part of that process, Virginia Code § 15.2-2286(A)(7) prescribes that an amendment may occur "[w]henever the public necessity, convenience, general welfare, or good zoning practice requires," and permits "[a]ny such amendment [to] be initiated" by, among other things, a "resolution of the governing body," but mandates that "[a]ny such resolution . . . by such governing body . . . proposing the rezoning shall state the above public purposes therefor."

The Town Council purported to initiate the Data Center Zoning Amendment to authorize data center uses by a resolution dated April 13, 2021 ("Data Center Resolution"). A copy of the Data Center Resolution, which was approved, but never executed, is attached as **Exhibit 3**. That resolution did not state any public purposes, as required by Virginia Code § 15.2-2286(A)(7).

Failure to comply with that requirement results in the invalidation of the zoning amendment. *See, e.g.*, *Ace Temporaries, Inc. v. City Council of the City of Alexandra*, 274 Va. 461, 467 (2007) ("Code § 15.2-2286(A)(7) requires that each time an amendment to the Zoning Ordinance is made, the amendment must be properly initiated," i.e., by "an initiating motion . . . with a stated public policy reason"). Under this rule, the Data Center Zoning Amendment is void *ab initio*, meaning it can be challenged at any time. As a result, the Amazon SUP and all other approvals issued in reliance on that invalid Data Center Zoning Amendment, purporting to approve a use not allowed by the Zoning Ordinance, are void too, as the Citizens alleged in the Amazon SUP case. *See Renkey v. Cnty. Bd. of Arlington Cnty.*, 272 Va. 369, 376 & n.7 (2006); *see also* Town of Warrenton Zoning Ordinance § 11-3.10.1 ("Only those special use permits that are expressly authorized . . . may be approved").

In fact, Amazon's counsel throughout the Amazon SUP and the Amazon SDP process, and who sought the Determination, John H. Foote, Esquire, was counsel of record in *Ace Temporaries*, in which he defeated a zoning amendment for want of initiation. He quite literally wrote the book on that law in Virginia. In it, summarizing the holding of *Ace Temporaries*, Mr. Foote noted that "a failure to state one or more of the four listed purposes in the initiation resolution or motion is a procedurally fatal defect that renders an enactment void ab initio." *See* John H. Foote, *Planning and Zoning* in Handbook of Virginia Local Government Law § 1-12.08, at 1-74 (April Wimberly ed., 2022 ed.) (hereinafter, "Foote, *Handbook*"). In the *Handbook*, Amazon's counsel also observed that the Supreme Court has "held that the thirty-day appeal period applies only to 'judicial review of the reasonableness of the rezoning enactment,'" and "does not bar claims that a rezoning ordinance is void ab initio for asserted procedural defects." Foote, *Handbook* § 1-12.11(b), at 1-76 (citing *Kole v. City of Chesapeake*, 247 Va. 51, 57 (1994)). The Circuit Court in the Amazon SUP Case agreed with that analysis and refused to dismiss the Citizens' claims on those grounds. Exhibit 6 *infra*.

II. Amazon's Proposed Data Center Faced Public Opposition, and the Amazon SUP and the Amazon SDP, Approving that Use, Have Been Subject to Appeal, and Even a Stay, Since Issued.

After enactment of the Data Center Zoning Amendment, Amazon applied for the Amazon SUP. It faced vocal public opposition throughout the process, culminating in a public meeting at which citizen comments in opposition lasted until 2:30 a.m., when it was approved by a vote of 4-3. *See* James Jarvis, "Warrenton Town Council approves Amazon data center proposal" FAUQUIER NOW (Feb. 15, 2023), https://www.fauquiernow.com/news/business/warrenton-town-council-approves-amazon-data-center-proposal/article_3913e82e-ad0a-11ed-83f3-538a8a5bb411.html, attached as **Exhibit 4**. The next day, counsel to Amazon noted in an email to counsel for the Town that "the likelihood of litigation is very high." A copy of that email is attached as **Exhibit 5**. His predictions were borne out.

On March 16, 2023, the Citizens filed a 6-count Petition, challenging the Amazon SUP, in compliance with Virginia Code § 15.2-2285(F). Amazon intervened in the suit on April 14, 2023.

Based on the reasoning summarized above, the Citizens sought: (1) a declaration that the Data Center Zoning Amendment—and the Amazon SUP by extension—was "unlawful and void *ab initio*, a nullity, and of no force or effect"; (2) an order prohibiting Amazon and the Town from taking any action "to advance work on the Data Center or at the Property to further that use"; and (3) an order directing

the Town "to deny any applications for and otherwise refuse to issue the Data Center Permits and any other governmental approval to the Data Center or otherwise premised upon the void Amazon SUP . . . or Data Center Zoning Amendment," which expressly included the Amazon SDP.

Amazon and the Town moved to dismiss the Citizens' claims. Agreeing with the Citizens, the Fauquier County Circuit Court rejected Amazon and the Town's motion, ruling on December 13, 2023, that the Citizens had alleged facts showing "that the Data Center Zoning Amendment is void *ab initio* . . . and that the Data Center SUP is also void *ab initio*," and so had stated claims "upon which the relief demanded may be granted under Virginia law." A copy of the Court's order memorializing the rulings made by Judge James P. Fisher is attached as **Exhibit 6**.

In the face of the Amazon SUP Case, Amazon proceeded with seeking the Amazon SDP, which was approved on April 18, 2024, but was promptly appealed to the BZA by the Citizens, in BZA-24-1, on May 17, 2024. When Mr. Robert L. Walton purported to decide for the BZA that such appeal was not permissible, that determination too was appealed to the BZA by the Citizens, in BZA-24-2, on June 11, 2024 (collectively, the "Citizens' BZA Appeals"). These appeals automatically stayed all "proceedings in furtherance of the action appealed from," to wit, the Amazon SDP, under Virginia Code § 15.2-2311(B), meaning the Amazon SDP was not "in effect" and foreclosed any "good faith reliance" on it by Amazon.

Out of an abundance of caution, on May 29, 2024, the Citizens also filed an Emergency Motion for Preliminary Injunctive Relief in the Amazon SUP Case (the "Vested Rights Motion"), requesting entry of an immediate stay, direction to the BZA to proceed on the Citizens' BZA Appeals, and that "all proceedings in furtherance of" either the Amazon SUP or the Amazon SDP "be stayed" "throughout the duration of any appeal" thereof, including "through final judgment," basing the claim of emergency on the potential that vested rights may be claimed to follow from the Amazon SDP, upon passage of the 60-day period under Virginia Code § 15.2-2311(C), a section Amazon now cites. Amazon made no response.

The Circuit Court evaluated the Vested Rights Motion and concluded that time was not of the essence, specifically that the Vested Rights Motion "does not articulate a legal emergency," and so put the matter off until January 21, and 22, 2025, long after the 60-day period would run if the stays were not in place. In the meantime, the Citizens also filed a petition for writ of mandamus in the Circuit Court, Case No. CL24000303-00, on June 10, 2024, seeking an order compelling the Town Officials to permit the Citizens' BZA Appeals to proceed and so recognize the validity of the Citizens' BZA Appeals (the "Citizens' BZA Case").

While the Town actively contested the Citizens' BZA Appeals, the Vested Rights Motion, and the Citizens' BZA Case, Amazon still made no response. And it apparently was not pursuing any activity in furtherance of the Amazon SDP, consistent with its obligations under Virginia Code § 15.2-2311(B). Accordingly, neither the Citizens' BZA Appeals nor the Citizens' BZA Case advanced.

Instead, the parties proceeded with the Amazon SUP Case, and ultimately agreed to address maintenance of the status quo through a Consent Order, entered by Judge Fisher on January 14, 2025:

> ORDERED, ADJUDGED, and DECREED that Amazon shall not seek, nor shall the Town approve, further permits or approvals related to the construction of a data center on the Property, including, without limitation, land disturbance permits or building permits, nor shall Amazon otherwise further construction of the data center on the Property, until a Final Order has been entered. . . . Any Party may seek the dissolution or extension of this Order and, in the event that all Parties do not consent to its dissolution or extension, then before this Order is dissolved or extended the Preliminary Injunction Motion shall be scheduled for a hearing, and ruled upon.

A full copy is attached as Exhibit 1. With all further action stayed, the Citizens' BZA Case has lingered, as has the Citizens' BZA Appeal, awaiting the conclusion of the Amazon SUP Case.

It is because of the Amazon SUP Case that, after entry of the Consent Order, the BZA expressly deferred resolution of the Citizens' BZA Appeals of the Amazon SDP by Motion dated March 4, 2025, a copy of which is attached as **Exhibit 7**, "until such time as the Circuit Court renders a decision." That was both practically and legally the right decision given that the validity of the Data Center Zoning Amendment, the Amazon SUP, and the Data Center Permits, including the Amazon SDP, had already been challenged in the Amazon SUP Case.

III. Having Raised Vested Rights as a Defense in the Amazon SUP Case, the BZA Lacks Jurisdiction to Decide That Question Now.

In its Answer and Grounds of Defense dated March 22, 2024, Amazon put before the Circuit Court in the Amazon SUP Case the defense that it had a vested right to proceed with the data center use. For paragraph 5 of its grounds of defense, Amazon stated that

> 5. Amazon justifiably relied on the validity of the Data Center Zoning Amendment when it filed and processed its application for the SUP, and invalidation of the Data Center Zoning Amendment on the grounds alleged cannot impact the validity of Town Council's legislative approval of the SUP.

Amazon's Answer at 28, ¶ 5 (Mar. 22, 2024). A decision on that defense will be made following trial, which since January 14, 2025, has been scheduled to commence on March 9, 2026. Presently, that bench trial is scheduled to conclude by March 11, 2026. Under the terms of the Consent Order Withdrawing Standing Defense, Dismissing Certain Plaintiffs, and Releasing Certain Trial Dates, entered on January 23, 2026, both the Town and Amazon's standing defenses were dispensed, leaving the above-quoted vested rights

defense as one of the primary issues to be decided by the Circuit Court of Fauquier County. Yet Amazon seeks a decision from the BZA first, while the question is before that court.

It is improper for the BZA to proceed with deciding whether Amazon had vested rights in the Amazon SUP, while that same legislative action and that very defense are the subject of the Amazon SUP Case. *See Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566, 582 (2019) (holding that "a party can 'elect between' the zoning administrator and the circuit court, which have concurrent jurisdiction concerning vested rights determinations," and citing *Board of Supervisors v. Crucible, Inc.*, 278 Va. 152, 158 (2009), and *Craig v. Hoge*, 95 Va. 275, 279 (1897), as "explaining 'that between two courts of concurrent jurisdiction, the court which first acquires cognizance of the controversy . . . . is entitled to retain it until the end of litigation . . . and finally dispose of it'"). As the *Bragg* Court concluded, the landowner "has the right to select which of the [forums] having concurrent jurisdiction he will bring his action in," but, having elected as Amazon did here, the landowner is "bound by his selection and cannot thereafter bring an action concerning the same subject-matter in a tribunal having concurrent jurisdiction unless a question is involved that cannot be adjudicated by the first [forum]." *Id.* (citation omitted); *see also, e.g.*, *Smith v. Bd. of Supvrs. of Fairfax Cnty.*, 234 Va. 250, 255 (1987) (refusing to recognize local administrative authority over a local assessment because "[w]hen the statutory procedure is invoked, the determination of the correctness of a challenged assessment, as well as any grant of appropriate relief, become matters exclusively of judicial concern").

It is beyond dispute that the Circuit Court of Fauquier County first acquired jurisdiction over Amazon's vested rights argument and that it can adjudicate Amazon's claim of a vested right. And Amazon has urged it to do so. Thus, the BZA lacks jurisdiction to decide Amazon's BZA Appeal.

IV. Vested Rights Require "Good Faith Reliance," Which Cannot Be Created by Incurring Obligations or Expenses in Reliance on Acts the Legality of Which Is Under Challenge.

Regardless of whether the BZA has jurisdiction to decide whether Amazon has vested rights while the Amazon SUP Case remains undecided, the pendency of that case precludes a finding that any expenditures were taken in good faith reliance and so may give rise to vested rights.

"Whether a landowner has acquired a vested right in property is a question of law." *Bragg Hill Corp.*, 297 Va. at 581. Under Virginia law, vested rights have always required a showing of "good faith" reliance on an approval. Before the General Assembly adopted Code § 15.2-2307, the Supreme Court of Virginia noted that "[w]here . . . a special use permit has been granted under a zoning classification, a bona fide site plan has thereinafter been filed and diligently pursued, and substantial expense has been incurred ***in good faith*** before a change in zoning, the permittee then has a vested right to the land use described in the use permit and he cannot be deprived of such use by subsequent legislation." *Notestein v. Bd. of Supers. of Appomattox Cnty.*, 240 Va. 146, 151 (1990) (emphasis added).

The requirement of "good faith" is no makeweight. Rather, the Supreme Court has expressly rejected the "contention that a landowner may acquire a vested property right in a particular land use merely by showing a significant official governmental act and reliance thereon," which is all Amazon purports to show. Instead, the Supreme Court has insisted, among other things, "that the landowner

establish that he has . . . incurred substantial expense ***in good faith*** . . . . A landowner, who seeks to assert a vested property right, must establish all these elements." *Snow v. Amherst Cnty. Bd. of Zoning Appeals*, 248 Va. 404, 407 (1994) (emphasis added), *superseded on other grounds by* Va. Code § 15.2-2307 *as stated in City of Suffolk ex rel. Herbert v. Bd. of Zoning Appeals for City of Suffolk*, 266 Va. 137, 144–45 (2003).

Thereafter, the Virginia General Assembly expressly adopted this formulation, making it clear that "good faith reliance" is a separate element that the landowner must show to establish vested rights. *See* Va. Code § 15.2-2307(A) (providing for a vested right "when the landowner (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project, (ii) relies in good faith on the significant affirmative governmental act, and (iii) incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act").

Given the requirement of a "significant affirmative governmental act which remains in effect allowing development of a specific project," Amazon can claim no vested right based on the passage of the Data Center Zoning Amendment, authorizing one to seek an SUP for a data center. *See Town of Leesburg v. Long Lane Assocs. Ltd. P'ship*, 284 Va. 127, 135 (2012) ("[W]hen a landowner has only a future expectation that he will be allowed to develop his property in accord with its current classification under the local zoning ordinance, there is no vested property right in the continuation of the land's existing zoning status."); *see, e.g.*, *Town of Stephens City v. Russell*, 241 Va. 160, 164 (1991) (rejecting the argument that a landowner "had acquired a vested right in the zoning classification which existed before the zoning amendment was enacted" because the landowner "had not obtained any type of governmental permit or approval," at the time of the expenditures and construction). Thus, that invalid zoning amendment did not make Amazon "the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project," but merely allowed it to request such a "significant affirmative governmental act."

As noted above, Virginia law requires proof Amazon "relie[d] in good faith on the significant affirmative governmental act." Issuance of the Amazon SUP and/or Amazon SDP, and proof of subsequent activity consistent with those approvals alone, will not do. "Good faith" reliance must be shown. While there is little Virginia authority on what "good faith" means in this context, that requirement is not unique to Virginia law on vested rights. Rather, it has long been applied by the highest courts of the Commonwealth's sister states in similar circumstances to reject claims like those Amazon raises here.

For example, it has been generally recognized that the obligation of good faith reliance requires "reasonable" reliance and that "[a]ctions taken in reliance on a . . . permit while the time for appeal is pending are inherently unreasonable." *Ebzery v. City of Sheridan*, 982 P.2d 1251, 1257 (Wyo. 1999) (collecting cases). "Rather than protected activity, the commitment and expenditures under these circumstances are considered to be a calculated risk." *Id.* (collecting cases). Like Amazon here, in *Ebzery,* the "Owners knew that the Board's decision was hotly contested and subject to appeal for 30 days after the time the Board rendered its final decision." Yet "before the time for appeal had passed, they executed a contract and paid a non-refundable deposit for materials, tore down substantial portions of the hedge, and paved a driveway, providing for the placement of fence posts," and otherwise "continued to substantially complete the construction after the appeal was filed despite the fact the petitioners had

concurrently filed a motion for stay of the administrative order." In those circumstances, the Court held that "the theory of vested rights does not apply." *Id.* The Supreme Court of Wyoming has more recently applied this rule to reject claimed reliance on a challenged special use permit in similar circumstances. *Northfork Citizens For Responsible Dev. v. Bd. of Cnty. Comm'rs of Park Cnty.*, 228 P.3d 838, 847 (Wyo. 2010) ("Expenditures made with knowledge of a court challenge are not expenditures made in good faith reliance upon a variance or permit. We continue to hold that, in Wyoming, completion of a project under a variance or permit during the pendency of an appeal does not render the appellate issues moot.").

Wyoming is not alone. In *Bowman v. City of York*, 240 Neb. 201, 216 (1992), the Nebraska Supreme Court was asked to recognize vested rights when an owner "knew for almost a week before it began construction that the variance under which it was proceeding faced a court challenge." The Court refused, noting "[a]ny expenditures it made under that circumstance cannot be said to have been made in good faith reliance on the variance. In the words of the district court, 'Economic might under a guise of claimed good faith detrimental reliance cannot replace or change due process of law.'" *Id*. (citation omitted)

The Supreme Court of New Hampshire too held that "landowners who decide to proceed with their projects heedless of serious questions about the legality of their actions may be deemed to have taken a 'calculated risk,' rather than to have relied in good faith. . . . Such reliance is neither reasonable, nor in good faith." *Hussey v. Town of Barrington*, 135 N.H. 227, 232–33 (1992) (internal citations omitted).[1]

So too holds the Supreme Court of Maine. *NECEC Transmission LLC v. Bureau of Parks & Lands*, 281 A.3d 618, 635, as revised (Me. 2022) (holding that to acquire a vested right by reliance, "[t]hat permit must be final and not subject to direct or further appeal").

The same goes for the highest Court in the State of Maryland. *See, e.g.*, *Powell v. Calvert County*, 795 A.2d 96, 101 (Md. 2002) ("[A] special exception approval, whose validity is being litigated, is not finally valid until all litigation concerning the special exception is final. Persons proceeding under it prior to finality are not 'vesting' rights; they are commencing at 'their own risk' so that they will be required to undo what they have done if they ultimately fail in the litigation process.").

And so too the highest court in North Carolina has held. *Stowe v. Burke*, 255 N.C. 527, 533 (1961) (explaining that when a landowner received an approval "fully aware of a community of opposition to the project and of pending legislation which, if adopted, would prevent defendants from proceeding with the project," yet "moved forward with construction at an extraordinary pace in an attempt . . . to establish a

[1] *See also, e.g.*, *Columbus Bd. of Zoning Appeals v. Wetherald*, 605 N.E.2d 208, 210 (Ind. Ct. App. 1992) ("We cannot sanction Wetherald's construction pending appeal as creating mootness; otherwise, those seeking variances for construction purposes could circumvent zoning requirements by simply constructing in accordance with permits issued, although final resolution of the propriety of such variances was still pending on appeal. Wetherald proceeded to build at his own peril prior to a final resolution of the variance issues."); *Schneider v. Calabrese*, 5 Pa. Cmwlth. 444, 453–54 (1972) (holding that "one who obtains a building permit and begins construction" or "executes a building contract," or "obligates himself on a mortgage" "prior to expiration of the appeal period ordinarily proceeds at his own peril." (citing *Cheltenham Township Appeal*, 413 Pa. 379 (1964); *Riccardi v. Plymouth Township Board of Adjustment*, 393 Pa. 337 (1958); *Silverco, Inc. v. Zoning Board of Adjustment*, 379 Pa. 497 (1954))).

right to continue the project," "the court below was justified in concluding that [said landowner] did not act in good faith in doing the work on the project and in incurring expenditures with respect thereto.").

The highest court in Pennsylvania also agrees. *See Beecham Enters., Inc. v. Zoning Hearing Bd. of Kennedy Twp.*, 530 Pa. 272, 275 (1992) (affirming the finding that a "case for vested rights lacking with respect to the fourth factor, 'the expiration without appeal of the period during which an appeal could have been taken from the issuance of the permit'").

Indeed, it appears no State Supreme Court that has ruled in favor of Amazon's position here. That being so, the General Assembly must be presumed to have been aware of this understanding of the term "good faith" when it adopted Virginia Code § 15.2-2307 and intended it to apply in Virginia. Thus, the BZA would not only be embarking into territory previously unknown to the basic tenets of local government law in this country if it agrees with Amazon's positions, but it would also be flouting the Assembly's intent.

Consistent with this understanding, there is no Virginia authority suggesting that a vested right may arise without good faith reliance or that one may rely in good faith in the face of substantiated challenges to the legality of the approval. Rather, whether proceeding under the common law, Virginia Code § 15.2-2307(A), or Virginia Code § 15.2-2311(C), the landowner must show he "relied in good faith" or that there was "good faith reliance," respectively. Were "subsequent expenditures in furtherance" enough, the case law or Code would say so.

The cases cited by Amazon support no such rule. In *Board of Supervisors of Richmond Cnty. v. Rhoads*, 294 Va. 43, 50 (2017), cited by Amazon, no one had advised "the Rhoadses that the Garage violated the Ordinance until more than 240 days after Quicke signed the Certificate, approving the Garage," and the Rhoadses had already built it. On these facts, it was "undisputed that the Rhoadses materially changed their position in good faith reliance on the zoning administrator's approval of the zoning for their building plans." *Id.* And in *Board of Supervisors v. Bowman*, there was also no challenge or other notice prior to reliance that the "flagpole installation violated any zoning ordinances," and no evidence that the Bowmans acted "to obtain an unconscionable advantage," but solely in reliance on what they were told. *Bd. of Supvrs. of Prince Edward Cnty. v. Bowman*, No. 0490-23-2, 2025 WL 1033993, at *9–10 (Va. Ct. App. Apr. 8, 2025) (per curiam). Amazon suffered from no similar lack of notice.

Against a deluge of evidence of notice of illegality, in the face of persistent legal opposition, and in conflict with a raft of on-point persuasive authority holding that such facts negate good faith reliance, Amazon offers no contrary authority to support its position. Apparently, the research of both Amazon and of the undersigned has not revealed ***a single published decision*** from any court holding that a party may rely in good faith, and so acquire vested rights, by advancing construction during an appeal period or during the pendency of an appeal. That Amazon is asking the BZA of the Town of Warrenton to become the first tribunal to so hold should tell this body all it needs know.

What is worse, Amazon has produced no evidence of good faith reliance on a prior approval of a data center use on its property in the Town. Instead, it offers only two things. First, Amazon points to its actions in furtherance of the data center use, both before and after the Data Center Zoning Amendment's passage, the approval of the Amazon SUP, and the issuance of the Amazon SDP. With respect to any

reliance pre-dating the Amazon SUP, one cannot rely on anticipated acts, potential future approvals, or on the state of existing zoning laws, but rather must base his reliance on an act in which the landowner "obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project." Va. Code § 15.2-2307(A); *see Town of Leesburg*, 284 Va. at 135 ("[W]hen a landowner has only a future expectation that he will be allowed to develop his property in accord with its current classification under the local zoning ordinance, there is no vested property right in the continuation of the land's existing zoning status."); *see, e.g.*, *Town of Stephens City*, 241 Va. at 164 (rejecting the argument that a landowner "had acquired a vested right in the zoning classification which existed before the zoning amendment was enacted" because the landowner "had not obtained any type of governmental permit or approval," at the time of the expenditures and construction). Thus, Amazon's claim of reliance on the anticipated or adopted Data Center Zoning Amendment, or any assurances prior to issuance of the Amazon SUP, fails as a matter of law.

Most of Amazon's "reliance" occurred before the Amazon SUP was even sought, much less approved. As Amazon admitted in the Amazon SUP Case, it spent $39,703350.00, more than ten times the assessed value, on the Property that is the proposed site of the data center, on or about September 21, 2021, shortly after the Data Center Zoning Amendment was passed, nearly 17 months before the Amazon SUP was issued. *See* Pet. ¶¶ 32, 33 (Aug. 21, 2023); Amazon's Answer ¶¶ 32, 33 (Mar. 22, 2024).

Second, in urging good faith reliance, Amazon asserts the absence of evidence regarding what it subjectively knew in the "record here," an omission of its making. *See* Amazon's BZA Appeal at 9 n.3. In doing so, Amazon ignores that it has the burden of proof and must prove its good faith. *See Goyonaga v. Bd. of Zoning Appeals*, 275 Va. 232, 244 (2008). Regardless, the Citizens have shown that Amazon was well aware of the law rendering the Data Center Zoning Amendment and approvals taken in reliance thereon to be void *ab initio*, and that as early as February 16, 2023, anticipated that the Amazon SUP would be challenged in court. *See* Exhibit 5. And there is no claim that Amazon was not timely apprised of the Amazon SUP Case, which it voluntarily intervened in by Motion on April 12, 2023.

Regardless, and whatever Amazon was told by its counsel or subjectively thought, a fact Amazon has not proffered, the BZA should follow the weight of authority treating "actions taken in reliance on a . . . permit while the time for appeal is pending [to be] inherently unreasonable." If this rule is not followed, Amazon and other large interests could unilaterally cut off the constitutional right to challenge unlawful government action, including during the 30-day period recognized in Virginia Code § 15.2-2285(F). With all of Amazon's alleged acts of "good faith reliance" having been taken while the Amazon SUP and Amazon SDP were either subject to appeal, or actively on appeal (even stayed), none can cure those unlawful governmental acts or entitle Amazon to build an illegal data center.

One cannot simply win the race once notice of illegality has been obtained; rather, "[t]hroughout the cases in which the rule appears there runs the dominating theme of fairness and good faith," "without 'racing'" to claim a vested right with knowledge that it may be declared unlawful. *Penn Twp. v. Yecko Bros.*, 420 Pa. 386, 391 (1966). The treatise writers have summed up the judicial treatment of this "so-called 'race of diligence,' stating that a controversy of this kind, i.e., between a permit holder's private right and the general public interest, should not depend on the outcome on a race for technical advantage." *See* 4 RATHKOPF'S THE LAW OF ZONING AND PLANNING § 70:30 (4th ed.). Nor should "[e]conomic

might under a guise of claimed good faith detrimental reliance . . . replace or change due process of law.'" *Bowman*, 240 Neb. at 216 (citation omitted).

Rather than vesting rights, Amazon's acts in "reliance" on these timely and lawfully challenged acts are proof of its violation of both the Consent Order, the jurisdiction of the Circuit Court, and the automatic stay in Code § 15.2-2311(B). As such, those acts can confer no rights, but only expose Amazon to sanctions. For that reason, counsel to the Citizens are filing a Motion for Rule to Show Cause why Amazon should not be held in contempt in the Amazon SUP Case.

* * *

The parties agreed, and the Circuit Court ordered, that the parties resolve Amazon's entitlement to proceed with the data center through orderly judicial proceedings, with trial in the Amazon SUP Case set for March 2026. That order must be honored and the courts respected. What's more, Amazon elected to put the question of vested rights before the Circuit Court, the body that appoints the BZA. It must be held to that election. Amazon's belated attempt to obtain from this tribunal what is now committed to the courts violates both the letter and spirit of the Consent Order and exceeds the BZA's jurisdiction.

At the least, the BZA should defer Amazon's BZA Appeal while the Amazon SUP Case proceeds. Even if it does not defer, the BZA should deny Amazon's claim of vested rights. The opposition conclusion would require the BZA to rule that Amazon may set at naught all Virginia law demarcating the limits of legislative action on zoning matters simply by plowing ahead in the face of legal challenges, and so would reward Amazon for willfully ignoring the law.

With appreciation for your consideration of the Citizens' rights, I am,

Very truly yours,



Michael H. Brady

Enclosures
CC: Heather E. Jenkins, Secretary of the Board of Zoning Appeals of the Town of Warrenton
Matthew A. Crist, Esq., Counsel to the Board of Zoning Appeals of the Town of Warrenton
Gordon D. Todd, Esq., Counsel to Amazon
Matthew A. Westover, Esq., Counsel to Amazon
J. Chapman Petersen, Esq., Special Counsel to Town
Philip Carter Strother, Esq., Town Attorney

Exhibit 1:

Consent Order
January 14, 2025

VIRGINIA:

IN THE CIRCUIT COURT FOR FAUQUIER COUNTY

CHARLES AND MARYGAY CROSS, *et al.*	)	
	)	
Plaintiffs-Petitioners	)	
	)	
v.	)	**Case No. CL 23-128**
	)	
TOWN COUNCIL FOR THE TOWN OF WARRENTON, *et al.*	)	
	)	
Defendants-Respondents	)	
	)	

CONSENT ORDER

THIS MATTER is before the Court on the Parties' request for entry of an Order maintaining the status quo and staying further approvals related to the construction of a data center by Defendant Amazon Data Services, Inc. ("**Amazon**") on certain property described herein until a final order has been entered by this Court fully resolving the claims remaining in the First Amended Petition (the "**Final Order**") or upon further Order of the Court; and

IT APPEARING that this case involves a challenge to the Town Council of the Town of Warrenton's approval of Amazon's application for Special Use Permit #22-03 (the "**Amazon SUP**"), which authorizes the construction of a data center on property located in the Town of Warrenton identified as Parcel ID 6984-69-2419 (the "**Property**"), subject to further approvals from the Town of Warrenton; and

IT FURTHER APPEARING that following the approval of the Amazon SUP and the filing of the First Amended Petition by Plaintiffs-Petitioners (the "**Citizens**") in this case, Amazon filed a Site Development Plan ("**SDP**") for the construction of a data center on the Property, which SDP was approved by the Town of Warrenton on or about April 18, 2024 (the "**SDP Approval**"); and

IT FURTHER APPEARING that on May 16, 2024, the Citizens sought to appeal the SDP Approval to the Board of Zoning Appeals of the Town of Warrenton (the "**BZA Appeal**"), and on May 29, 2024, filed a Motion for Preliminary Injunctive Relief in this Court (the "**Preliminary Injunction Motion**"), which addressed the BZA Appeal and requested, among other things, "that all proceedings in furtherance of the Amazon SUP be stayed ... throughout the duration of the Amazon SUP Case to final judgment;" and

IT FURTHER APPEARING that the SDP Approval and BZA Appeal, among other acts, are the subject of two other proceedings in this Court, Case Nos. CL24000303-00, and CL24000305-00 (the "**SDP Approval Cases**"); and

IT FURTHER APPEARING that the Preliminary Injunction Motion is scheduled for a two-day evidentiary hearing on January 21 and 22, 2025; and

IT FURTHER APPEARING that, without prejudice to the Parties' arguments regarding the Amazon SUP, the SDP Approval or the Preliminary Injunction Motion, or any arguments in the SDP Approval Cases or in this Amazon SUP Case, the Parties have agreed to maintain the status quo and Amazon has agreed not to pursue further approvals, to seek development permits related to construction or to further construction of the data center on the Property until a Final Order has been entered; and

IT FURTHER APPEARING that the entry of this Order is just and proper in all respects, it is hereby

ORDERED, ADJUDGED, and DECREED that Amazon shall not seek, nor shall the Town approve, further permits or approvals related to the construction of a data center on the Property, including, without limitation, land disturbance permits or building permits, nor shall Amazon otherwise further construction of the data center on the Property, until a Final Order has been

entered. This Order is entered on the joint request of the Parties and shall not constitute a decision on the merits of the Preliminary Injunction Motion or any issue remaining in the Amazon SUP Case, or any issue relating to the BZA Appeal in the SDP Approval Cases, with all Parties expressly reserving all arguments related thereto. Any Party may seek the dissolution or extension of this Order and, in the event that all Parties do not consent to its dissolution or extension, then before this Order is dissolved or extended the Preliminary Injunction Motion shall be scheduled for a hearing, and ruled upon. The hearing on the Preliminary Injunction Motion currently scheduled for January 21 and 22, 2025, is hereby removed from the docket without prejudice and may be reset as set forth herein.

THIS MATTER SHALL CONTINUE.

ENTERED January 14th, 2025.

Judge, Fauquier Circuit Court

James P. Fisher, Judge

WE ASK FOR THIS:

John H. Foote, VSB No. 14336
Matthew A. Westover, VSB No. 82798
Brooke N. West, Esq., VSB No. 99595
WALSH, COLUCCI, LUBELEY & WALSH, P.C.
4310 Prince William Parkway, Suite 300
Prince William, Virginia 22192
Telephone: (703) 680-4664
Facsimile: (703) 680-2161
jfoote@thelandlawyers.com
mwestover@thelandlawyers.com
bwest@thelandlawyers.com

Counsel for Amazon Data Services, Inc.

E: WESTOVER READY CRIM 1-14-25

SEEN AND CONSENTED TO AS STATED, RESERVING ALL ARGUMENTS AND OBJECTIONS IN THIS CASE, THE BZA APPEAL, AND SDP APPROVAL CASES

Dale G. Mullen (VSB No. 48596)
Michael H. Brady (VSB No. 78309)
Michelle E. Hoffer (VSB No. 97029)
Zanas D. Talley (VSB No. 97736)
WHITEFORD, TAYLOR & PRESTON L.L.P.
Two James Center
1021 East Cary Street, Suite 2001
Richmond, Virginia 23219-4000
Telephone: 804.799.7854 / 804.977.3303 / 804.807.7385 / 804.807.7382
Facsimile: 804.762.6863 / 804.762.6864 / 804.593.1363 / 804.593.1365
dmullen@whitefordlaw.com
mbrady@whitefordlaw.com
mhoffer@whitefordlaw.com
ztalley@whitefordlaw.com

Counsel for Plaintiffs-Petitioners

SEEN AND

Martin R. Crim, Esq. (VSB No. 33385)
SANDS ANDERSON PC
725 Jackson Street, Suite 217
Fredericksburg, VA 22401
Telephone: (703) 663-1720
mcrim@sandsanderson.com

John D. McGavin, Esq. (VSB No. 21794)
Heather Bardot, Esq. (VBS No. 37269)
William W. Miller (VSB No. 97125)
MCGAVIN, BOYCE, BARDOT, THORSEN, & KATZ, PC
9990 Fairfax Boulevard, Suite 400
Fairfax, VA 22030
Telephone: (703)-385-1000
Facsimile: (703)-385-1555
jmcgavin@mbbtklaw.com
hbardot@mbbtklaw.com
wmiller@mbbtklaw.com

Counsel for Defendant-Respondent, Town of Warrenton, Virginia

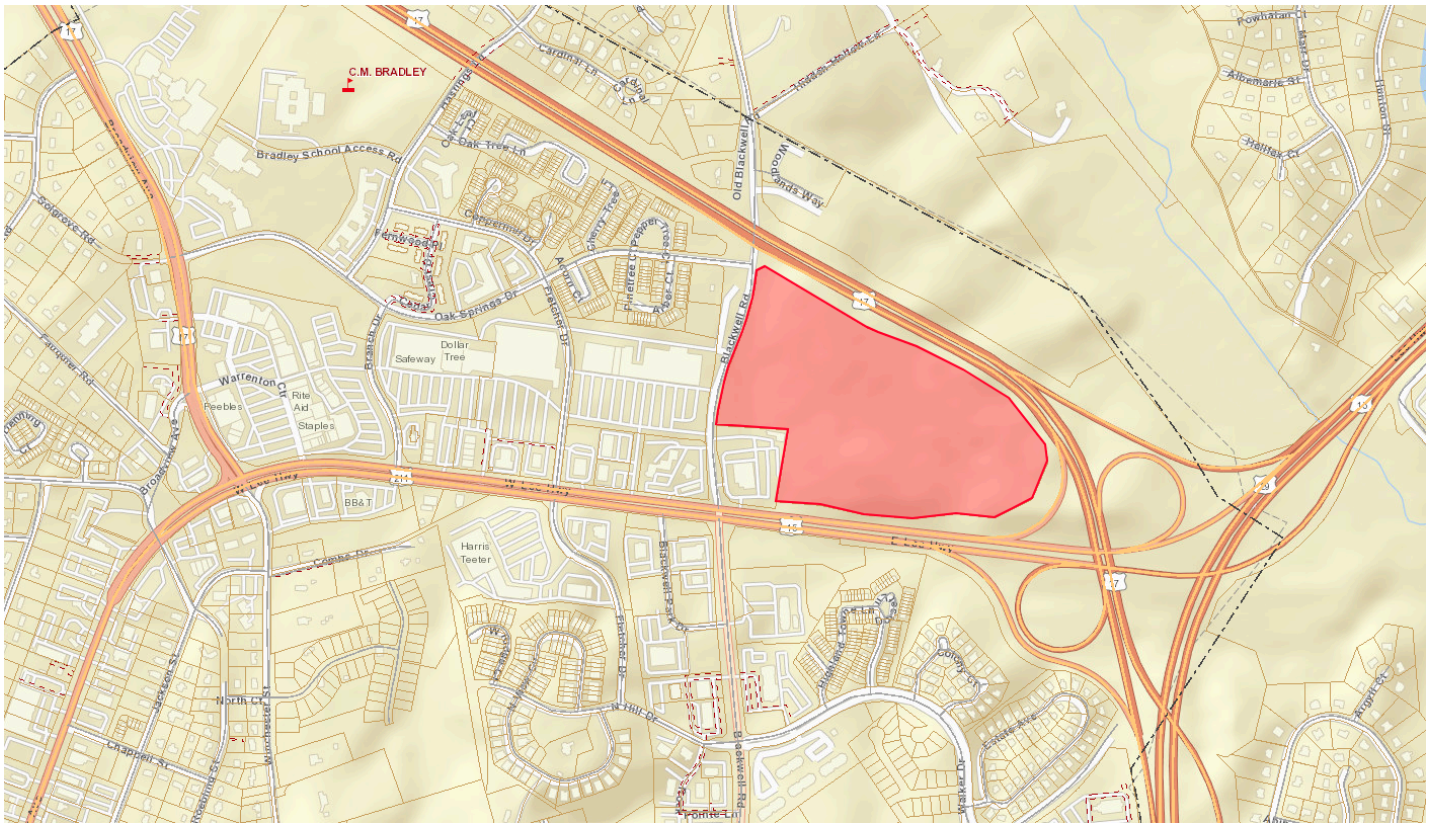
Exhibit 2:

Prince William Times News Article
August 1, 2022

https://www.fauquier.com/news/documents-outline-process-that-led-to-data-center-zoning-amendment/article_7c0ca36e-0d19-11ed-8bb6-e3e49dfc869c.html

Documents reveal developer's role in Warrenton's new zoning rules for data centers

By Peter Cary/Piedmont Journalism Foundation
Aug 1, 2022



Amazon Web Services, Inc. purchased 42 acres, highlighted in red, in Warrenton on Sept. 21, 2021. The company hopes to build a data center on the property.

Fauquier County GIS

New information obtained through public record requests sheds more light on the process by which a **zoning text amendment concerning data centers** was initiated by the Warrenton Town Council in April 2021 and passed unanimously in August 2021 after public hearings.

By approving the amendment, the council gave itself the option of considering applications to build data centers on industrial-zoned properties on a case-by-case basis. The text amendment does not allow data centers by-right, and the process to obtain a special-use permit includes a public-hearing requirement.

The first test of the approval began when Amazon Web Services **applied** in April of this year to build a data center on Blackwell Road behind Country Chevrolet.

Information from town documents obtained via public record requests by the Piedmont Journalism Foundation and the Piedmont Environmental Council — and from meeting records and interviews with town officials — provide a limited view into what happened behind the scenes that paved the way for Amazon to file its application. (PJF board member Mark Ohrstrom also sits on the board of the PEC; PEC board co-chair Jean Perin is listed as a "benefactor" of the PJF, which owns the *Fauquier Times*.)

The documents also raised questions in the eyes of two public officials about how the process unfolded. In particular, they wonder why Amazon was allowed to have input into what had been labeled a "town council-initiated" zoning amendment.

"Had I known what I know today, I would not have voted for that amendment," said Town Councilman William Semple (Ward 2), after reviewing information from public records.

Warrenton staff members were contacted Feb. 24, 2021, by the office of John Foote, a land-use attorney, advising them that he had a client interested in locating a data center in town. (The staff learned later the client was Amazon Web Services.) Shortly thereafter, the email contacts between Foote and the town dropped off for two months, but resumed in late April.

Town staffers did not officially notify the planning commission or council until Foote **appeared** before the planning commission on June 15, 2021, that Amazon was looking to locate in town and was interested in a specific site.

When Foote's office first contacted the town about a potential data center, Economic Development Director Rob Walton reported back that the client was looking at the **former wire factory on Falmouth Street**, according to town emails. Amazon ultimately dropped its interest in that site due to fiber-optic deficiencies.

On April 13, 2021, the town council voted unanimously to begin the process of amending the zoning code to allow data centers on a case-by-case basis. At the meeting, Semple asked, "Is there something that is inspiring us to move ahead?"

Town Manager Brandie Schaeffer replied this was a continuation of the council's look at data centers from back in 2017, which later stalled during the pandemic. She said, "We get inquiries almost every couple of months about a possible data center location" and that this was just to start a staff study. Schaeffer did not mention a specific data company or town site; at that point, Foote had not been communicating with the town for about two months.

The town council voted unanimously to have staff draft a zoning text amendment.

During April and May of 2021, staff worked to write the draft zoning amendment that would allow the council to consider data center applications.

According to Foote on June 15, he gave suggestions to the town staff on the language of the amendment. "We have worked with [economic development director Rob] Walton on text, we have given him suggestions," Foote said.

There is no indication of what influence, if any, Foote's suggestions had on the final text.

Neither then-town manager Schaeffer, who resigned earlier this month, nor economic development director Rob Walton, nor Foote responded to questions posed to them for this story. Semple agreed to be interviewed, but later Mayor Carter Nevill sent an email to council members saying that non-disclosure agreements that some officials had signed so they could meet with Amazon in July 2021, could preclude talking to the press.

On April 21, 2021, as the staff worked on the data center text amendment, Foote emailed Schaeffer to say he had a "possible draft" in hand and that his client would like to do a Zoom call with her and staff. The emails do not indicate whether the Zoom meeting took place, nor when the staff learned Foote's client was Amazon.

Schaeffer, who was out of the county, replied. "We dropped an initiation on the consent [agenda] last month," she wrote, so staff was now working on the text amendment at the direction of council. "Any research or sample codes are welcome."

This launched a flurry of emails between mainly Foote and Walton, with Walton accepting "any data or recommendations" and Foote asking to look at the town's text.

On May 25, 2021, Jessica Pfeiffer in Foote's office emailed the staff asking, "Is there any further coordination needed on the language?" She emailed later the same day, asking "Do you have draft language?" The planning commission met later that evening in a work session.

At that work session, the commission was asked to consider the zoning amendment recently initiated by the council. Commissioner James Lawrence asked why, noting there was "not an applicant seeking approval." The town's planning manager told him the "question [of data centers] comes up often, and council would like to be able to provide answers."

The planning commission took up the amendment at its next regular session on June 15. Foote, who was introduced as "the applicant," stood before the seven members of the Warrenton Planning Commission. He told them he had a client that had secured a contract on the Weissberg property at Blackwell Road and Lee Highway, and wanted to build a data center there. The client was Amazon Web Services.

For the planning commissioners, this was a surprise. They thought they were taking up a zoning amendment that would allow data centers in the town's industrial zone. They hadn't known there was a potential applicant to build one. The planning commission tabled a decision for 30 days.

Two days later, an Amazon official texted Walton, asking for a meeting to discuss the text amendment. "Time is of the essence," she wrote.

On June 29 Walton sent an email to the entire planning commission: "Amazon will be reaching out to you all to discuss the text amendment."

Amazon, apparently, was under some pressure. Prior to June 15, 2021, according to Foote, Amazon had contracted to **buy the Weissberg property** for $39.7 million, and according to a note from Schaeffer was nearing the end of study periods to determine if it should finalize its contract.

In early July, Amazon pressed to set up more meetings. An email indicated Schaeffer would meet with Amazon officials the week of July 5, 2021. Whether Schaeffer signed a non-disclosure agreement to meet with Amazon is not known, but Walton and zoning administrator Kelly

Machen did. By July 15, at least six members of the town council and at least three planning commissioners had met individually with town officials and Amazon representatives, according to notes taken by Schaeffer.

One was Ali Zarabi, a planning commissioner for 21 years. According to Schaeffer's notes, he objected to what he called "tailor made processing" for Amazon.

Zarabi also later expressed concerns about the writing of the amendment. He said a small town like Warrenton has limited expertise on its staff, and that consulting with a land-use expert like Foote might be OK in some circumstances. But Zarabi said that *if* town staff allowed him to help draft a zoning amendment for his client, that was, in his opinion "outside of the bounds of the ethical and professional way [for the town] to approach this."

As for Foote, Zarabi gave him credit for being "transparent" and working diligently for his client.

Regarding the private meetings with Amazon, Semple later wrote an email to Schaeffer saying the "optics" of town officials signing NDAs and meeting with the company did not look good. Still, he and other officials agree that private meetings with applicants are not unusual in Warrenton, as elected and appointed officials often meet one-on-one with businesses looking for zoning adjustments.

Susan Helander, a planning member for 14 years and currently the commission chair, described it as a practice that helps the business take the town's temperature and allows the public officials to learn more about what is wanted or offered. Of her private meeting with Amazon officials, she said, "I wouldn't look at it as it was sneaky. It was just more for information."

At the next planning commission meeting on July 20, Zarabi cast the lone vote against the text amendment to allow data centers. One of his biggest issues, he said, was that they were not mentioned in the town's comprehensive plan, passed in April. He said later that "data centers have never been discussed in three and a half years [of plan development] and were outside of what the public was aware of. Therefore it was not in the people's plan."

Commissioner Lawrence said he had once been opposed to the text amendment but had changed his mind. He said this amendment merely allowed the town to decide on future data center development. Given the potential tax benefits, he said the town ought to be allowed that

option.

Meeting on Aug. 10, the town council unanimously approved the text amendment. On Sept. 21, 2021, Amazon closed its land purchase deal.

On April 13, 2022, Foote's office sent the town an application for a special use permit for Amazon to put a data center at the Blackwell Road site.

Semple said that he now regrets his vote in favor of the text amendment, considering that data centers in Warrenton are a "big deal."

"Why didn't we take more time? Why didn't we explore the true implications? ... I ask myself, why did I vote for this amendment?" Semple said.



Data centers' secrecy often keeps residents in the dark

Exhibit 3:

Data Center Resolution
April 13, 2021

RESOLUTION TO RECOMMEND THE TOWN STAFF ANALYZE AND BEGIN THE PROCESS TO AMEND THE ZONING ORDINANCE TO ADD A DATA CENTER USE THE INDUSTRIAL (I) DISTRICT REGULATIONS WITHIN ARTICLE 3, SUPPLEMENTAL USE REGULATIONS WITHIN ARTICLE 9 AND ARTICLE 12 DEFINITIONS

WHEREAS, the Town of Warrenton's Zoning Ordinance allows certain uses within the Industrial (I) District; and

WHEREAS, Article 9 Supplemental Use Regulations and Article 12 Definitions may also need to be updated; and

WHEREAS, Staff is requesting the initiation of a Zoning Ordinance text amendment to consider adding a Data Center use to the I District;

WHEREAS, pursuant to Section 11-3.9.2 of the Town Zoning Ordinance allows Town Council to initiate a text amendment by Resolution.

NOW THEREFORE, be it resolved, that the Town Council of the Town of Warrenton directs Town Staff to analyze and prepare a text amendment to the Town Zoning Ordinance to amend the current I District Regulations.

Voting for:

Voting against:

Adopted:

Exhibit 4:

Fauquier Now News Article
February 15, 2023

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Later Allow
https://www.fauquiernow.com/news/business/warrenton-town-council-approves-amazon-data-center-proposal/article_3913e82e-ad0a-11ed-83f3-538a8a5bb411.html
Powered by iZooto

FEATURED

Warrenton Town Council approves Amazon data center proposal

James Jarvis, jjarvis@FauquierNow.com
Feb 15, 2023

1 of 3



The Warrenton Town Council voted 4-3 to approve Amazon Data Services' request for a special-use permit to build a data the Fauquier High School auditorium.

James Jarvis | FauquierNow

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

The Warrenton Town Council voted in the pre-dawn hours Wednesday to approve Amazon Data Services' request for a special-use permit to build a 220,000-square-foot data center at the intersection of Blackwell Road and Lee Highway in Warrenton.

Powered by iZooto

The decision signified the end of Amazon's involvement in the public approval process, which began in April 2022 when the tech giant filed its application with the town. When constructed, it will be the third data center located in Fauquier County.

But after the vote, many residents who attended the meeting vowed the fight was not over as they exited the Fauquier High School auditorium around 2:30 a.m.

Voting in favor of the resolution were council members Heather Sutphin, Ward 2, Brett Hamby, Ward 3, James Hartman, Ward 4, and Jay Heroux, Ward 5. Ward 2 representative William Semple and At-Large council members Paul Mooney and David McGuire opposed.



At-Large council member David McGuire voted against the proposal to build a data center in Warrenton during the council's Feb. 14 meeting.

James Jarvis | FauquierNow

Noise concerns linger

On Jan. 10, the council held a public hearing during which hundreds of residents poured into Town Hall to express opposition to the data center, including former Planning Commissioner Ali Zarabi, who abstained from voting on the proposal in early December.

The council decided to table a vote on the proposal until February so Amazon could review several preconditions drafted by staff, including noise, safety, and environmental mitigation measures. The town also added several guidelines – such as an annual noise test, site plan and Certificate of Occupancy permit for each development phase – to ensure Amazon complies with the town's ordinances.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

10 images capturing this week's historic Warrenton Town Council meeting

The Warrenton Town Council voted in the pre-dawn hours Wednesday to approve Amazon Data Services' request for a special-use permit to build a 220,000-square-foot data center at the intersection of Blackwell Road and Lee Highway in Warrenton. ***FauquierNow reporter James Jarvis captured these images.***

Powered by Widgetic



Oscar-winning actor Robert Duvall waits his turn to speak about the proposed Amazon data center during the Warrenton Town Council public hearing on Feb. 14.

James Jarvis | FauquierNow

But during the council's Tuesday morning work session, Semple said he saw several flaws with the application, including the noise mitigation measures, which was one of the biggest concerns expressed by residents.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

Semple said he was concerned an annual noise test needed to be more frequent for the town to determine whether the data center complies with its ordinance the other 364 days out of the year.

Powered by iZooto

“You could be in noncompliance, and nobody would know about it,” Semple said. “And that's really not much of a protection for the health, safety, and welfare of our citizens.”

But Jay Reinke, who is part of Amazon Web Services’ real estate development team, said that since the noise level was not going to change throughout the year, the test “should be indicative of all 365 days.”

Presenting a hypothetical scenario, Semple asked Reinke whether the town’s noise ordinance would be violated if Amazon had to turn on its approximately 24 generators in case of a power outage.

Reinke said if this happened, there is a possibility 24 generators running simultaneously would result in a violation. Still, he argued, the chance of a countywide power outage is “probably once in a lifetime.”



Ward 2 council member Bill Semple voted against the Amazon data center proposal on Feb. 14.

James Jarvis | FauquierNow

John Foote, Amazon's legal counsel and a land-use attorney with the Arlington-based firm Walsh Colucci Lubeley & Walsh, said nothing would stop the town from "running noise tests whenever it feels like."

But he noted doing a sound test every day wouldn't "really tell you much" due to ambient noise surrounding the facility from other sources like traffic

In the Amazon-commissioned sound study conducted by Warrenton-based Polysonics Acoustics & Technology Consulting Corporation, the company determined the "proposed mechanical equipment will meet the Zoning Ordinance, provided the proposed mitigation is used at the chillers and generators."

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

While presenting the report to council members, Chris Karner, a senior consultant for Polysonics, said Warrenton has one of the strictest noise ordinances he's seen in his decade-plus career.

Powered by iZooto

"If you look through the report, the background noise is more the data center, and the traffic noise is more of a source," Karner said. "The traffic is 30 [decibels] higher than the data center."

Debate over 'rural character'

Beyond noise concerns, many of the approximately 130 people signed up to speak – including renowned 92-year-old actor Robert Duvall – pleaded with council members to consider how a data center might impact the town's "rural character" and open the door to other more data centers.



Oscar-winning actor Robert Duvall waits his turn to speak about the proposed Amazon data center during the Warrenton Town Council public hearing on Feb. 14.

James Jarvis | FauquierNow

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto

Peggy DiVincenzo, who lives on Falmouth Street on the opposite side of town from where the data center is proposed, said she moved from Fairfax County five years ago to “have a sense of community again” similar to the small town where she grew up. DiVincenzo said constructing a data center would be a “turning point” for Warrenton.

“I think that you have this tremendous opportunity to be true to the vision of what Warrenton was set out to be many years ago,” she said. “But also to prevent the sense of community from dissipating and the sense of dissatisfaction from becoming prominent.”

But council member Heroux argued that constructing a data center would not threaten the county's rural character. He said the Amazon proposal is in a prime location to generate economic growth.



Warrenton resident Peggy DiVincenzo speaks during town council's Feb. 14 public hearing on the Amazon data center proposal.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

"That's why we have a service district, and that is done so the remainder of the county can remain rural, as I think we're doing a good job doing," he said. "The [Amazon special-use permit] does not ruin the rural and historical interests of the town. The interests of the town are commercial."

Powered by iZooto

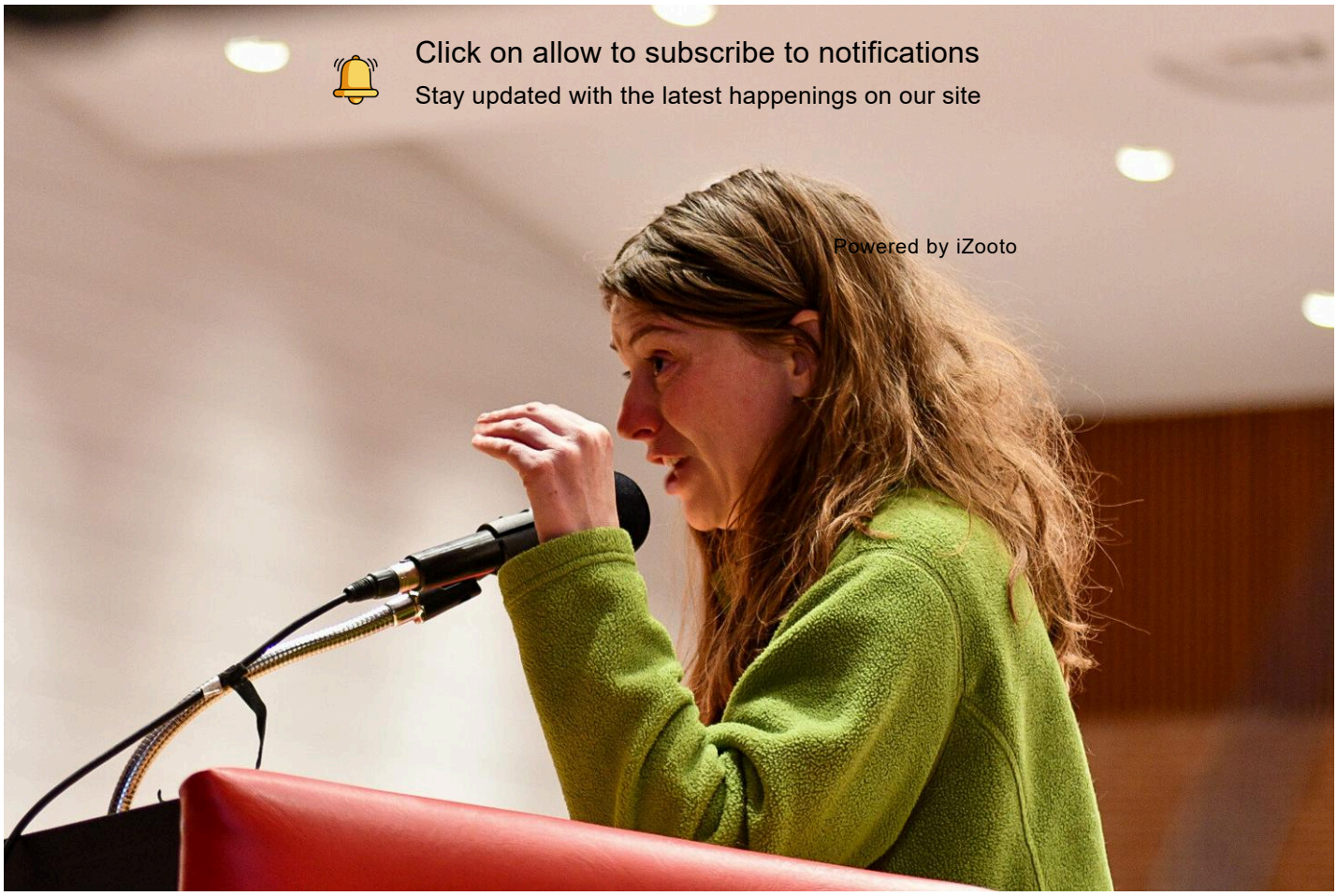
Heroux added, "We have great partners, such as Country Chevrolet, Sheetz, CVS, and the Hampton Inn. They employ our citizens. They pay taxes. There are over 300 [street] lights – I counted them – of all types at night as you enter the town of Warrenton. That's not rural. It's busy, and it's loud."

Another Fauquier resident, McKenzie Miller, who lives in Marshall District just south of Warrenton, said during the hearing she couldn't understand why something else could not go on that property, namely affordable housing, instead of a data center.

"I think if Amazon wants to buy this place, they can build affordable housing," Miller said. "Why can't you guys spend this much time agonizing over affordable housing?"

Fighting back tears, Miller argued this isn't the first time council members have chosen not to listen to residents and went forward with a plan that did not have a consensus. She referenced the 2040 Comprehensive Plan, which received notable opposition.

Miller urged the council to avoid repeating the same mistake.



With tears in her eyes, Fauquier County resident McKenzie Miller pleads with the Town Council not to approve Amazon's application for a special use permit to build a 220,000-square-foot data center several miles from her home south of Warrenton.

James Jarvis | FauquierNow

“It just rattles me to my core the fact that I stood in front of you guys during the Comprehensive Plan, and I felt like you were just looking at me but not paying attention,” Miller said. “For somebody who has a disability and lives on a small budget, I'm afraid for my future.”

Council member Hamby said the town has previously tried to pursue several other options – from the Warrenton Greene development proposal to a Walmart – but each time, they failed.

Hamby said the biggest problem with the property is that the Virginia Department of Transportation only allows access to the property from Blackwell Road, meaning that if the town approved a bustling commercial or residential

development, it could create significant traffic congestion issues.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

Tax benefits

Hamby also noted a data center brings in a lot of tax revenue without the town needing to put more money toward additional services like it would for residential developments.

Powered by iZooto

According to estimates from Fauquier County Commissioner of Revenue Eric Maybach, the $550 million project would generate approximately $4 million in tax revenue for the town over the next five years, or about $900,000 annually on average.

The town's adopted fiscal 2023 budget was approximately $31.3 million.



Hundreds of town and county residents attended the Amazon data center public hearing Feb. 14 at the Fauquier High School auditorium.

James Jarvis | FauquierNow

According to Heroux, $900,000 is enough to pay for the town's refuse and recycling expenses, 60% of the Warrenton Aquatic & Recreation Center's operating costs and nearly 60% of the costs for its legal, human resource and finance departments.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto

"[Amazon] has not asked for tax breaks. They're investing $550 million in our town. That tax revenue also goes to the county that goes back into our schools," Heroux said.

Questions over emails persist

Before the final vote, council members McGuire, Mooney and Semple said they were worried that members were making a decision without knowing all the facts, including what was said in the 3,142 emails former Town Manager Brandie Schaeffer exchanged with Amazon representatives.

The town is currently in the midst of a legal battle with the nonprofit Citizens for Fauquier County over the withholding of the emails in question.

Schaeffer left her position with the town last year and went to work for Amazon shortly thereafter.

Mooney motioned for the council to approve a resolution that would have allowed members – though not the public – to review the correspondence before a final vote. But the motion was struck down in a 4-3 vote, with Hamby, Hartman, Sutphin, and Heroux voting against it.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto



At-Large council member Paul Mooney voted against the proposal to build a data center in Warrenton during the council's Feb. 14 meeting.

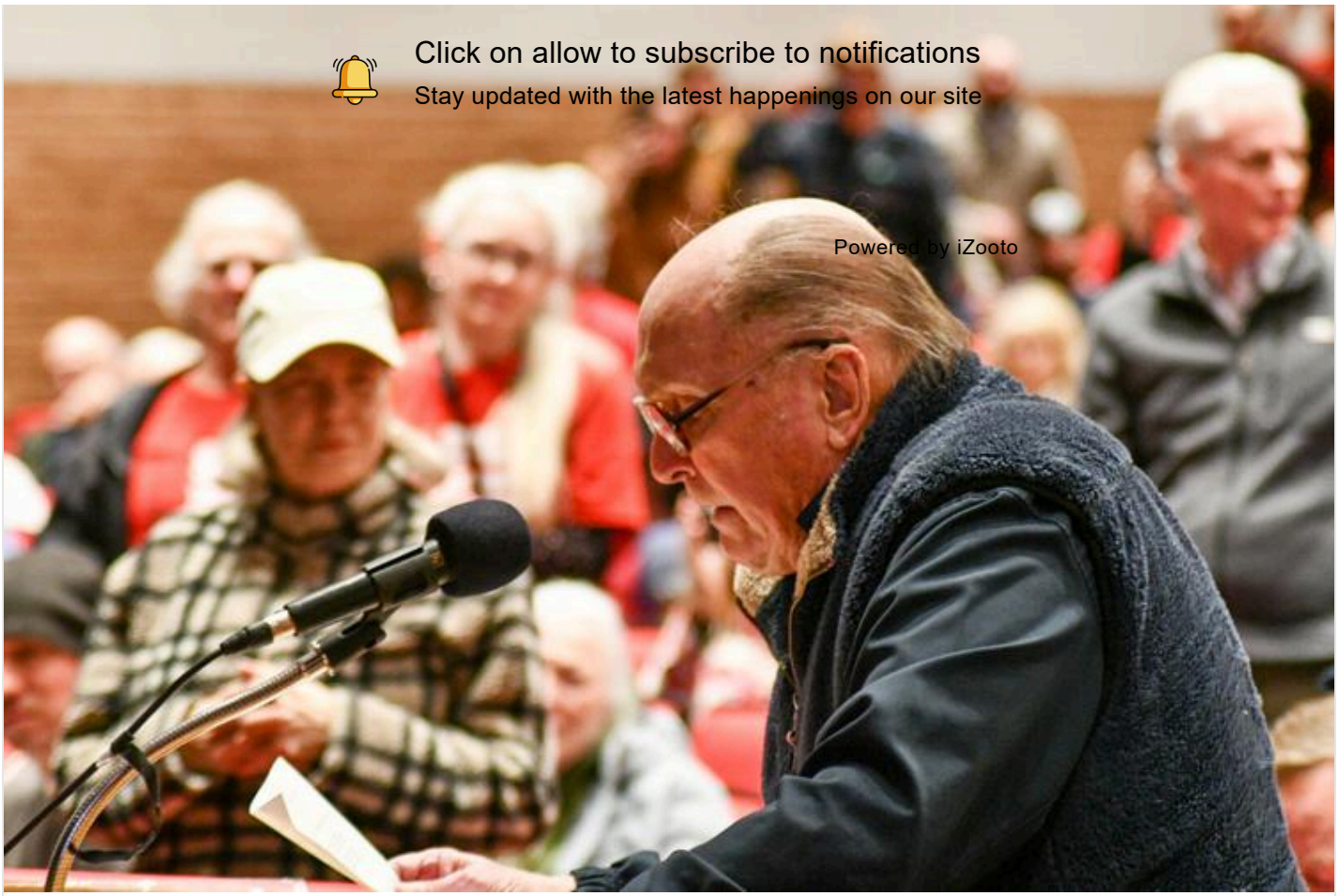
James Jarvis | FauquierNow

However, the council eventually approved Mooney's previous resolution, which calls for members to see the emails, though the review would not occur until after the final vote.

As the night was winding down, Semple, Mooney, and McGuire expressed disappointment and concern about the council's decision. But McGuire vowed "the fight is not over."

Correction: *This story has been updated and reflects the vote took place early Wednesday, not Tuesday night.*

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto

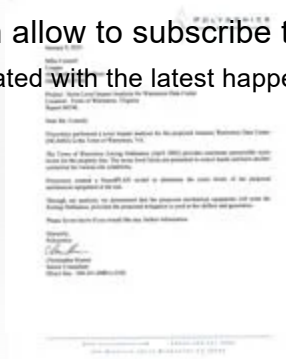


Oscar-winner Robert Duvall attends Warrenton Town Council meeting to oppose Amazon data center



Amazon application preconditions
Feb 15, 2023

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto



Polysonics sound study Amazon
Feb 15, 2023



UPDATE: Warrenton residents, environmental nonprofit file lawsuit in hopes of overturning Amazon data center decision

James Jarvis

Exhibit 5:

Emails btw. J. Foote and Town
February 16–27, 2023

From: "Foote"
Sent: Mon, 27 Feb 2023 16:43:34 +0000
To: "'Stephen Clough'" <sclough@warrentonva.gov>; "Martin Crim" <mcrim@vfnlaw.com>; "Tommy Cureton" <tcureton@warrentonva.gov>; "Rob Walton" <rwalton@warrentonva.gov>
Cc: "Denise Harris" <dharris@warrentonva.gov>; "Westover, Matthew" <mwestover@thelandlawyers.com>; "Thomas, Joanna E." <jthomas@thelandlawyers.com>; "Hardy, Michele" <mhardy@thelandlawyers.com>
Bcc: "sclough1@warrentonva.gov" <sclough1@warrentonva.gov>
Subject: RE: A Modest Proposal

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Michele – could you please send Stephen contacts at a couple of the Reporters that we have used of late. Thanks.

John H. Foote | Shareholder
Walsh, Colucci, Lubeley & Walsh, P.C.
4310 Prince William Pkwy | Suite 300 | Prince William, VA 22192
Phone: 703.680.4664 x5114 | Fax: 703.680.6067 | Cell: 703-801-5075
jfoote@thelandlawyers.com | www.thelandlawyers.com

AV® Preeminent™ Rated
Named Lawyer of the Year by *Best Lawyers* for Land Use and Zoning Litigation, 2013 and Land Use and Zoning Law, 2015 – 2018
Named to the *Best Lawyers* in America, 1995 – 2021, for Land Use and Zoning Law, Litigation - Land Use and Zoning, Litigation - Municipal, Litigation - Real Estate, Municipal Law, and Real Estate Law
Named to *Super Lawyers*, 2020, for Land Use/Zoning and Litigation
Named to *Virginia Business* magazine, Virginia Legal Elite 2020 for Land Use & Zoning and Litigation
Named to the *U.S. News & World Report*, *Best Law Firms*, 2016 – 2021
Ranked in *Chambers*, Band 1, Real Estate: Zoning/Land Use Attorney, Northern Virginia, 2007 – 2021
Ranked in *Chambers*, Band 1, Real Estate: Zoning/Land Use Firm, Northern Virginia, 2021

Confidentiality notice:

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to which they are addressed.

If you are not the intended recipient, please do not read, copy or
retransmit this communication but destroy it immediately.
Any unauthorized dissemination, distribution or copying of this communication
is strictly prohibited. This email does not establish an attorney-client relationship.

From: Stephen Clough <sclough@warrentonva.gov>
Sent: Monday, February 27, 2023 10:06 AM
To: Martin Crim <mcrim@vfnlaw.com>; Tommy Cureton <tcureton@warrentonva.gov>; Rob Walton <rwalton@warrentonva.gov>; Foote, John <jfoote@thelandlawyers.com>
Cc: Denise Harris <dharris@warrentonva.gov>; Westover, Matthew <mwestover@thelandlawyers.com>; Thomas, Joanna E. <jthomas@thelandlawyers.com>
Subject: RE: A Modest Proposal

External Sender. Be aware of links,
attachments and requests.

Mr. Foote,

Do you or your firm have a recorder that they would typically use for a proposal such as this?

The Town is interested in your proposal and would like to start the process of engaging someone.

Stephen Clough
Town Clerk, FOIA Officer
Town of Warrenton, VA

21 Main Street
Warrenton, VA 20186
M: (540)-714-9270
warrentonva.gov

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this communication is strictly prohibited without the permission of the sender. If the reader of this message is not the intended recipient, or if you have received this communication in error, please notify the sender immediately by return e-mail and delete the original message and any copies of it from your computer system.

From: Foote, John <jfoote@thelandlawyers.com>
Sent: Thursday, February 16, 2023 6:59 PM

To: Martin Crim <mcrim@vfnlaw.com>
Cc: Westover, Matthew <mwestover@thelandlawyers.com>; Thomas, Joanna E. <jthomas@thelandlawyers.com>
Subject: A Modest Proposal

It is altogether likely that you should begin putting together the Legislative Record of the AWS application since the likelihood of litigation is very high. We have been through this many times, and I know you are no neophyte. Perhaps we can discuss how best to handle such things as the Agenda Reviews and public hearings. In Culpeper, the County had the meetings transcribed, but I don't know that the entire Council hearings necessarily need be. I think a court reporter might commit seppuku halfway through the 8 hours. The Agenda Reviews should at least be considered for a court reporter and the videos of all can be part of the record. What might be done is to transcribe the actual Council discussion on the 14th, as well as the video. We can discuss further, but the record will be extensive. We have so far won every battle to have the record included through Oyer, especially since Byrne, but frankly before that as well. I am reaching out now because I expect that there will be some labor involved. I haven't cleared it yet with my folks, but I very much expect that they will share in the expense. I am also assuming you might be handling, but we also know the Town has, or has had, the land use rider on its VML policy.

John H. Foote | Shareholder
Walsh, Colucci, Lubeley & Walsh, P.C.
4310 Prince William Pkwy | Suite 300 | Prince William, VA 22192
Phone: 703.680.4664 x5114 | Fax: 703.680.6067 | Cell: 703-801-5075
jfoote@thelandlawyers.com | www.thelandlawyers.com

AV® Preeminent™ Rated
Named Lawyer of the Year by *Best Lawyers* for Land Use and Zoning Litigation, 2013
Named to the *Best Lawyers* in America, 1995 – 2023, for Land Use and Zoning Law, Litigation - Land Use and Zoning,
Litigation - Municipal, Litigation - Real Estate, Municipal Law, and Real Estate Law
Ranked in *Chambers*, Band 1, Real Estate: Zoning/Land Use Attorney, Northern Virginia, 2007 – 2023

Confidentiality notice:

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to which they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. This email does not establish an attorney-client relationship.

information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete it and immediately notify us by email or by phone. Thank you.

Exhibit 6:

Order Denying the Pleas in Bar & Overruling the Demurrers to Counts I and II, etc.
February 27, 2024

V I R G I N I A:

IN THE CIRCUIT COURT FOR FAUQUIER COUNTY
TWENTIETH JUDICIAL CIRCUIT

CHARLES AND MARYGAY CROSS, *et al.*,	)	
	)	
Plaintiffs-Petitioners,	)	
	)	
v.	)	Case No. CL23000128-00
	)	
THE TOWN COUNCIL FOR THE TOWN OF WARRENTON, *et al.*,	)	
	)	
Defendants-Respondents.	)	

ORDER DENYING THE PLEAS IN BAR & OVERRULING THE DEMURRERS TO COUNTS I AND II, BUT SUSTAINING THE DEMURRERS TO COUNTS III–VIII OF THE FIRST AMENDED PETITION, WITH LEAVE TO AMEND

On December 13, 2023, appeared the Plaintiffs-Petitioners (collectively, the "Plaintiffs") and Defendants-Respondents (collectively, the "Defendants"), by counsel, to be heard on the Responsive Pleadings of Defendants to the First Amended Petition for Review of In Re: Town of Warrenton, Special Use Permit 22-03, Complaint for Declaratory and Injunctive Relief, and Verified Petition for Writ of Mandamus, with Exhibits A through O, which was accepted for filing by order of August 21, 2023, and contains eight Counts (the "First Amended Petition").

The Responsive Pleadings consist of: (1) Amazon Data Services, Inc.'s Demurrer to the First Amended Complaint and Petition for Review, filed on September 8, 2023 ("Amazon's Demurrer"); (2) Amazon Data Services, Inc.'s Plea in Bar to the First Amended Complaint and Petition for Review, also filed on September 8, 2023 ("Amazon's Plea"); (3) the Town's Demurrer to Plaintiff-Petitioners' First Amended Petition and Complaint, filed on September 11, 2023 (the "Town Defendants' Demurrer"); and (4) the Town Defendants' Plea in Bar to the First Amended

Complaint and Petition for Review, also filed on September 11, 2023 (the "Town Defendants' Plea") (collectively, the "Responsive Pleadings").

The Town Defendants' Demurrer seeks dismissal of all Counts for want of standing, arguing that the First Amended Petition lacks sufficient factual allegations of the Plaintiffs' standing to challenge either the Special Use Permit 22-03 (the "Data Center SUP") or the zoning ordinance amendment of the Town of Warrenton approved by the Town Council on August 10, 2021 to allow a data center use with the approval of a special use permit (the "Data Center Zoning Amendment"). Plaintiffs argue that the First Amended Petition contains sufficient factual allegations to demonstrate Plaintiffs' ownership or occupation of real property within or in close proximity to the Property that is the subject of the Data Center SUP, establishing their direct, immediate, pecuniary, and substantial interest in the decision issuing the Data Center SUP, and to demonstrate a particularized harm to, and imposition of a burden upon, Plaintiffs' personal or property rights that is different from that suffered by the public generally and that arises out of the decision to approve the Data Center Zoning Amendment and issue the Data Center SUP.

Both the Town Defendants' Demurrer and Amazon's Demurrer argue that Count I of the First Amended Petition, challenging the Data Center Zoning Amendment as void *ab initio* on the ground that the ordinance was initiated in violation of Virginia Code § 15.2-2286(A)(7), and so also challenging the Data Center SUP issued under the Data Center Zoning Amendment as void *ab initio*, fails to state cause of action or to allege facts upon which the relief demanded may be granted under Virginia law.

Both the Town Defendants' Demurrer and Amazon's Demurrer also argue that Count II of the First Amended Petition, seeking a writ of mandamus against Town Officials to compel their denial of any approvals, licenses, or permits sought by Defendant Amazon Data Services, Inc.

pursuant to the authority of the Data Center Zoning Amendment or the Data Center SUP, fails to state cause of action or to allege facts upon which the relief demanded may be granted under Virginia law.

Additionally, all of the Responsive Pleadings urge that Counts I and II, contesting the lawfulness of the initiation of the Data Center Zoning Amendment and the lawfulness of the Data Center SUP issued under its authority, are barred because filed more than thirty (30) days after the Data Center Zoning Amendment was approved by the Town Council of the Town of Warrenton, and so beyond the appeal period provided in Virginia Code § 15.2-2285(F).

Finally, both the Town Defendants' Demurrer and Amazon's Demurrer also urge that Counts III, IV, V, VI, VII, and VIII of the First Amended Petition, raising various challenges to the lawfulness of the Data Center SUP, fail to state a cause of action or to allege facts upon which the relief demanded may be granted under Virginia law.

Pursuant to a Scheduling Order entered on August 25, 2023, the Defendants filed memoranda in support of the Responsive Pleadings on November 6, 2023, and the Plaintiffs filed a memorandum in opposition thereto on November 29, 2023. Upon consideration of the First Amended Petition, the above-referenced responsive pleadings and memoranda, and the arguments of counsel at the hearing on December 13, 2023, a transcript of which is attached hereto and incorporated herein, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. For all of the reasons appearing on the record, the First Amended Petition contains sufficient factual allegations of the Plaintiffs' standing to challenge both the Data Center SUP and the Data Center Zoning Amendment on all Counts stated in the First Amended Petition. Accordingly, the Town Defendants' Demurrer, to the extent it contests the sufficiency of the allegations of standing in the First Amended Petition, is **HEREBY OVERRULED**.

2. For all of the reasons appearing on the record, Count I of the First Amended Petition, challenging the Data Center Zoning Amendment and the Data Center SUP issued thereunder as void *ab initio*, both states a cause of action and alleges facts upon which the relief demanded may be granted under Virginia law. Accordingly, the Town Defendants' Demurrer and Amazon's Demurrer, to the extent either contests the sufficiency of the allegations in the First Amended Petition that the Data Center Zoning Amendment is void *ab initio* because initiated in violation of Virginia Code § 15.2-2286(A)(7) and that the Data Center SUP is also void *ab initio* because issued under the Data Center Zoning Amendment, are **HEREBY OVERRULED**.

3. For all of the reasons appearing on the record, Count II of the First Amended Petition also states a cause of action and alleges facts upon which the relief demanded may be granted under Virginia law. Accordingly, the Town Defendants' Demurrer and Amazon's Demurrer to Count II are **HEREBY OVERRULED**.

4. For all of the reasons appearing on the record, Virginia Code § 15.2-2285(F) does not bar Counts I or II as untimely because brought more than thirty (30) days after the Data Center Zoning Amendment was approved by the Town Council of the Town of Warrenton. Accordingly, to the extent the Responsive Pleadings contest the timeliness of the challenges brought in Counts I and II, they are both **HEREBY OVERRULED** and **DENIED**.

5. For all of the reasons appearing on the record, the Town Defendants' Demurrer and Amazon's Demurrer to Counts III, IV, V, VI, VII, and VIII of the First Amended Petition are **HEREBY SUSTAINED**, those Counts are **HEREBY DISMISSED WITHOUT PREJUDICE** and the Plaintiffs are **HEREBY GRANTED** leave to amend the First Amended Petition by filing a Second Amended Petition within twenty-one (21) days after the date of entry of this Order, should they so choose.

6. For the avoidance of doubt, any part of the Responsive Pleadings not specifically addressed is **HEREBY OVERRULED** and **DENIED**.

7. The Defendants are **HEREBY ORDERED** to file and serve their responsive pleadings within twenty-one (21) days after receipt of the Second Amended Petition, if any. If Plaintiffs do not file a Second Amended Petition, Defendants shall file and serve their Answers to Counts I and II of the First Amended Petition within twenty-one (21) days after receipt of Plaintiffs' notice of intent to stand upon the First Amended Petition.

8. The discovery obligations of Amazon, previously stayed by order entered October 31, 2023, shall remain **STAYED** until either the date of entry of an order resolving any further motion, demurrer or other plea filed by Amazon to Plaintiffs' Second Amended Petition, if any, or the date of Amazon's receipt of Plaintiffs' notice of intent to stand upon the First Amended Petition, upon the happening of either event such stay shall expire without further action or order of the Court.

9. The Clerk shall cause a certified copy of this entered order to be transmitted to all counsel of record; Endorsements of counsel are dispensed with per Rule 1:13- any counsel may, with leave herein granted, file a certificate of objections to the court's order within 30 days of the entry of this order.

SO ORDERED.

THIS CAUSE IS CONTINUED.

ENTERED this 27th day of February, 2024

Circuit Court Judge

James P. Fisher, Judge

SEEN AND OBJECTED TO ALL ADVERSE RULINGS FOR ALL OF THE REASONS APPEARING ON THE RECORD

1:13

Dale G. Mullen (VSB No. 48596)
dmullen@whitefordlaw.com
Michael H. Brady (VSB No. 78309)
mbrady@whitefordlaw.com
Michelle E. Hoffer (VSB No. 97029)
mhoffer@whitefordlaw.com
Zanas D. Talley (VSB No. 97736)
ztalley@whitefordlaw.com
WHITEFORD, TAYLOR & PRESTON L.L.P.
Two James Center
1021 East Cary Street, Suite 1700
Richmond, Virginia 23219-4000
Telephone: 804.799.7854 / 804.977.3303 / 804.807.7385 / 804.807.7382
Facsimile: 804.762.6863 / 804.762.6864 / 804.593.1363 / 804.593.1365

Counsel for Plaintiffs-Petitioners

SEEN AND

1:13

Martin R. Crim, Esq. (VSB No. 33385)
SANDS ANDERSON PC
725 Jackson Street, Suite 217
Fredericksburg, VA 22401
mcrim@sandsanderson.com
Telephone: (703) 663-1720

John D. McGavin, Esq. (VSB No. 21794)
jmcgavin@mbbtklaw.com
Heather Bardot, Esq. (VBS No. 37269)
hbardot@mbbtklaw.com
William W. Miller (VSB No. 97125)
wmiller@mbbtklaw.com
MCGAVIN, BOYCE, BARDOT, THORSEN, & KATZ, PC
9990 Fairfax Boulevard, Suite 400
Fairfax, VA 22030
Telephone: (703)-385-1000
Facsimile: (703)-385-1555

Counsel for Defendant-Respondent, Town of Warrenton, Virginia, et al.

SEEN AND OBJECTED TO as to those portions of the Order overruling Amazon's Demurrer and Plea in Bar for all the reasons stated in the pleadings, briefs, and on the record.

1:13

John H. Foote, Esq. (VSB No. 14336)
jfoote@thelandlawyers.com
Matthew A. Westover, Esq. (VSB No. 82798)
mwestover@thelandlawyers.com
Joanna E. Thomas, Esq. (VSB No. 97256)
jthomas@thelandlawyers.com
WALSH, COLUCCI, LUBELEY & WALSH, P.C.
4310 Prince William Parkway, Suite 300
Prince William, Virginia 22192
Telephone: (703)-680-4664
Facsimile: (703)-680-2161

Counsel for Defendant-Respondent, Amazon Data Services, Inc.

CC: J. Foot
M. Brady
M Crion
d. McGavin
2/27/23

Exhibit 7:

Motion to Defer Action – Citizens' BZA Appeal
March 4, 2025

TOWN OF WARRENTON
Department of Community Development
PO BOX 341
WARRENTON VIRGINIA 20188
http://www.warrentonva.gov
landdevelopment@warrentonva.gov
(540) 347-1101

March 5, 2025

Mr. Michael Brady
Whiteford, Taylor, & Preston LLC
1021 E. Cary Street
Suite 1700
Richmond, VA 23219

Re: Board of Zoning Appeals Deferral of Hearing on BZA #2024-1

Dear Mr. Brady:

On March 4, 2025, at their regular meeting, the Board of Zoning Appeals motioned to defer the appeal hearing for the approval of Site Development Plan (Application number SDP-23-6). A quorum was present at the meeting. The Board of Zoning Appeals voted (3-0) to defer action on BZA #2024-1 per the motion to defer action dated March 4, 2025 (attached).

Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the Town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board. If you have any questions about the letter, please do not hesitate to contact me at 540-347-1101.

Respectfully,

Heather Jenkins, PLA, CZA
Zoning Administrator & Secretary to the Board of Zoning Appeals
Town of Warrenton

CC: File

MOTION TO DEFER ACTION

APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF SITE DEVELOPMENT PLAN

BZA #2024-1

BZA MEETING DATE: MARCH 4, 2025

In Application BZA #2024-1, I move to defer the appeal hearing for the approval of Site Development Plan SDP-23-6 until such time as the Circuit Court renders a decision in the legal proceedings relevant to this request.

From:	Brady, Michael H.
To:	BZA; Heather Jenkins; mcrist@macpllc.net
Cc:	Todd, Gordon D.; Westover, Matthew; Chap Petersen; Philip Strother; Hay, Daniel; Rose, Emily A.; Scheper, Abby; Mullen, Dale G.; DiStanislao, Thomas; Byrd, Nicole; Wagner, Chandra; Shaia, Lauren
Subject:	BZA Appeal 25-3 - Town of Warrenton Board of Zoning Appeals
Date:	Tuesday, January 27, 2026 3:43:20 PM
Attachments:	2026.1.27 - Citizens" Letter to BZA.pdf Ex. 1 - Consent Order - 1.14.25.pdf Ex. 2 - Prince William Times News Article - 8.1.22.pdf Ex. 3 - Data Center Resolution - 4.13.21.pdf Ex. 4 - Fauquier Now News Article - 2.15.2023.pdf Ex. 5 - E-mails between J. Foote and Town - 2.16-27.23.pdf Ex. 6 - Order Overruling Pleas in Bar & Demurrers to Counts I and II - 2.27.24.pdf Ex. 7 - Motion to Defer Citizens" BZA Appeal - 3.04.25.pdf

---

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Ms. Jenkins,

Good afternoon! I hope you are well on this snowy Tuesday.

I am writing to you in your capacity as Secretary to the Town of Warrenton Board of Zoning Appeals (BZA), to provide the attached materials on behalf of my clients in connection with the above-referenced appeal. Eight (8) paper copies of these materials were filed by hand today with the Department of Community Development.

These materials are provided with the request that they be submitted to the members of the BZA, included in the BZA's official record, and considered in connection with the above-referenced appeal, which is presently scheduled for a hearing on February 3, 2026. Specifically, my clients are requesting that the above-referenced appeal be deferred pending conclusion of the Amazon SUP Case, CL23000128-00, pending in the Circuit Court of Fauquier County, or denied on the ground that Amazon has gained no vested rights, for the reasons more fully explained in the attached materials.

Should you have any questions, please do not hesitate to contact me at the information listed below, where I remain,

Very truly yours,

Michael H. Brady | *Partner & Co-Leader of Appellate Practice*

WHITEFORD

Two James Center | 1021 E. Cary Street, Suite 2001 | Richmond, VA | 23219-4000

t: 804.977.3303 | **f:** 804.762.6864 | **m:** 512.743.9484
Delaware | D.C. | Florida | New York | North Carolina | Kentucky | Maryland | Virginia
mbrady@whitefordlaw.com | www.whitefordlaw.com | Bio

*****Confidentiality*****

This email and any attachments with it are privileged and confidential and are intended solely for the use of the individual(s) to whom they are addressed. If you have received this email in error or are not the addressee, please immediately delete it and notify the sender.

This transmission contains information from the law firm of Whiteford, Taylor & Preston LLP which may be confidential and/or privileged. The information is intended to be for the exclusive use of the planned recipient. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this transmission in error, please notify the sender immediately.

Exhibit 1:

Consent Order
January 14, 2025

VIRGINIA:

IN THE CIRCUIT COURT FOR FAUQUIER COUNTY

CHARLES AND MARYGAY CROSS, *et al.*	)	
	)	
Plaintiffs-Petitioners	)	
	)	
v.	)	**Case No. CL 23-128**
	)	
TOWN COUNCIL FOR THE TOWN OF WARRENTON, *et al.*	)	
	)	
Defendants-Respondents	)	
	)	

CONSENT ORDER

THIS MATTER is before the Court on the Parties' request for entry of an Order maintaining the status quo and staying further approvals related to the construction of a data center by Defendant Amazon Data Services, Inc. ("**Amazon**") on certain property described herein until a final order has been entered by this Court fully resolving the claims remaining in the First Amended Petition (the "**Final Order**") or upon further Order of the Court; and

IT APPEARING that this case involves a challenge to the Town Council of the Town of Warrenton's approval of Amazon's application for Special Use Permit #22-03 (the "**Amazon SUP**"), which authorizes the construction of a data center on property located in the Town of Warrenton identified as Parcel ID 6984-69-2419 (the "**Property**"), subject to further approvals from the Town of Warrenton; and

IT FURTHER APPEARING that following the approval of the Amazon SUP and the filing of the First Amended Petition by Plaintiffs-Petitioners (the "**Citizens**") in this case, Amazon filed a Site Development Plan ("**SDP**") for the construction of a data center on the Property, which SDP was approved by the Town of Warrenton on or about April 18, 2024 (the "**SDP Approval**"); and

IT FURTHER APPEARING that on May 16, 2024, the Citizens sought to appeal the SDP Approval to the Board of Zoning Appeals of the Town of Warrenton (the "**BZA Appeal**"), and on May 29, 2024, filed a Motion for Preliminary Injunctive Relief in this Court (the "**Preliminary Injunction Motion**"), which addressed the BZA Appeal and requested, among other things, "that all proceedings in furtherance of the Amazon SUP be stayed ... throughout the duration of the Amazon SUP Case to final judgment;" and

IT FURTHER APPEARING that the SDP Approval and BZA Appeal, among other acts, are the subject of two other proceedings in this Court, Case Nos. CL24000303-00, and CL24000305-00 (the "**SDP Approval Cases**"); and

IT FURTHER APPEARING that the Preliminary Injunction Motion is scheduled for a two-day evidentiary hearing on January 21 and 22, 2025; and

IT FURTHER APPEARING that, without prejudice to the Parties' arguments regarding the Amazon SUP, the SDP Approval or the Preliminary Injunction Motion, or any arguments in the SDP Approval Cases or in this Amazon SUP Case, the Parties have agreed to maintain the status quo and Amazon has agreed not to pursue further approvals, to seek development permits related to construction or to further construction of the data center on the Property until a Final Order has been entered; and

IT FURTHER APPEARING that the entry of this Order is just and proper in all respects, it is hereby

ORDERED, ADJUDGED, and DECREED that Amazon shall not seek, nor shall the Town approve, further permits or approvals related to the construction of a data center on the Property, including, without limitation, land disturbance permits or building permits, nor shall Amazon otherwise further construction of the data center on the Property, until a Final Order has been

entered. This Order is entered on the joint request of the Parties and shall not constitute a decision on the merits of the Preliminary Injunction Motion or any issue remaining in the Amazon SUP Case, or any issue relating to the BZA Appeal in the SDP Approval Cases, with all Parties expressly reserving all arguments related thereto. Any Party may seek the dissolution or extension of this Order and, in the event that all Parties do not consent to its dissolution or extension, then before this Order is dissolved or extended the Preliminary Injunction Motion shall be scheduled for a hearing, and ruled upon. The hearing on the Preliminary Injunction Motion currently scheduled for January 21 and 22, 2025, is hereby removed from the docket without prejudice and may be reset as set forth herein.

THIS MATTER SHALL CONTINUE.

ENTERED January 14th, 2025.

Judge, Fauquier Circuit Court

James P. Fisher, Judge

WE ASK FOR THIS:

John H. Foote, VSB No. 14336
Matthew A. Westover, VSB No. 82798
Brooke N. West, Esq., VSB No. 99595
WALSH, COLUCCI, LUBELEY & WALSH, P.C.
4310 Prince William Parkway, Suite 300
Prince William, Virginia 22192
Telephone: (703) 680-4664
Facsimile: (703) 680-2161
jfoote@thelandlawyers.com
mwestover@thelandlawyers.com
bwest@thelandlawyers.com

Counsel for Amazon Data Services, Inc.

E: WESTOVER READY CRIM 1-14-25

SEEN AND CONSENTED TO AS STATED, RESERVING ALL ARGUMENTS AND OBJECTIONS IN THIS CASE, THE BZA APPEAL, AND SDP APPROVAL CASES

Dale G. Mullen (VSB No. 48596)
Michael H. Brady (VSB No. 78309)
Michelle E. Hoffer (VSB No. 97029)
Zanas D. Talley (VSB No. 97736)
WHITEFORD, TAYLOR & PRESTON L.L.P.
Two James Center
1021 East Cary Street, Suite 2001
Richmond, Virginia 23219-4000
Telephone: 804.799.7854 / 804.977.3303 / 804.807.7385 / 804.807.7382
Facsimile: 804.762.6863 / 804.762.6864 / 804.593.1363 / 804.593.1365
dmullen@whitefordlaw.com
mbrady@whitefordlaw.com
mhoffer@whitefordlaw.com
ztalley@whitefordlaw.com

Counsel for Plaintiffs-Petitioners

SEEN AND

Martin R. Crim, Esq. (VSB No. 33385)
SANDS ANDERSON PC
725 Jackson Street, Suite 217
Fredericksburg, VA 22401
Telephone: (703) 663-1720
mcrim@sandsanderson.com

John D. McGavin, Esq. (VSB No. 21794)
Heather Bardot, Esq. (VBS No. 37269)
William W. Miller (VSB No. 97125)
MCGAVIN, BOYCE, BARDOT, THORSEN, & KATZ, PC
9990 Fairfax Boulevard, Suite 400
Fairfax, VA 22030
Telephone: (703)-385-1000
Facsimile: (703)-385-1555
jmcgavin@mbbtklaw.com
hbardot@mbbtklaw.com
wmiller@mbbtklaw.com

Counsel for Defendant-Respondent, Town of Warrenton, Virginia

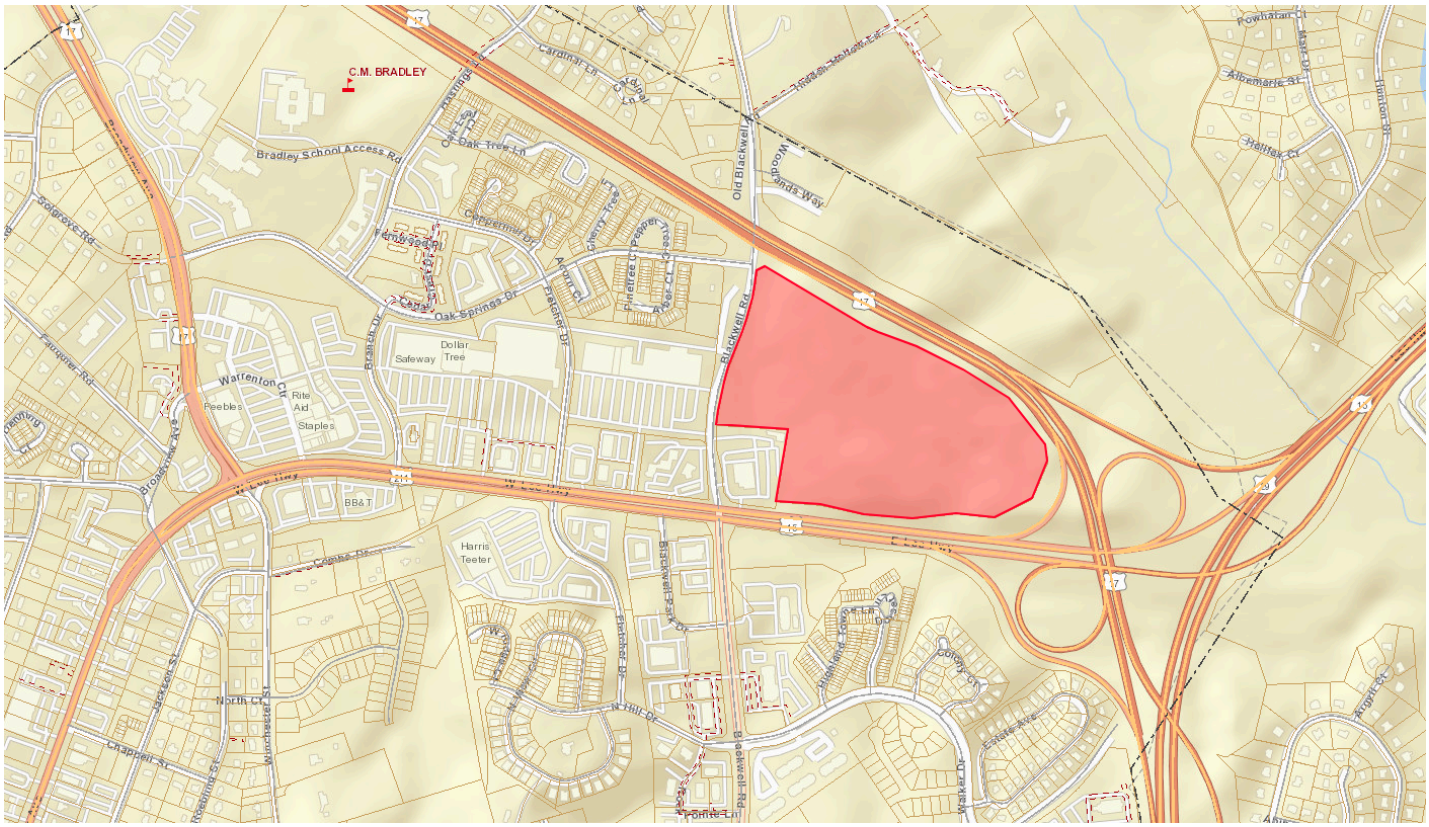
Exhibit 2:

Prince William Times News Article
August 1, 2022

https://www.fauquier.com/news/documents-outline-process-that-led-to-data-center-zoning-amendment/article_7c0ca36e-0d19-11ed-8bb6-e3e49dfc869c.html

Documents reveal developer's role in Warrenton's new zoning rules for data centers

By Peter Cary/Piedmont Journalism Foundation
Aug 1, 2022



Amazon Web Services, Inc. purchased 42 acres, highlighted in red, in Warrenton on Sept. 21, 2021. The company hopes to build a data center on the property.

Fauquier County GIS

New information obtained through public record requests sheds more light on the process by which a **zoning text amendment concerning data centers** was initiated by the Warrenton Town Council in April 2021 and passed unanimously in August 2021 after public hearings.

By approving the amendment, the council gave itself the option of considering applications to build data centers on industrial-zoned properties on a case-by-case basis. The text amendment does not allow data centers by-right, and the process to obtain a special-use permit includes a public-hearing requirement.

The first test of the approval began when Amazon Web Services **applied** in April of this year to build a data center on Blackwell Road behind Country Chevrolet.

Information from town documents obtained via public record requests by the Piedmont Journalism Foundation and the Piedmont Environmental Council — and from meeting records and interviews with town officials — provide a limited view into what happened behind the scenes that paved the way for Amazon to file its application. (PJF board member Mark Ohrstrom also sits on the board of the PEC; PEC board co-chair Jean Perin is listed as a "benefactor" of the PJF, which owns the *Fauquier Times*.)

The documents also raised questions in the eyes of two public officials about how the process unfolded. In particular, they wonder why Amazon was allowed to have input into what had been labeled a "town council-initiated" zoning amendment.

"Had I known what I know today, I would not have voted for that amendment," said Town Councilman William Semple (Ward 2), after reviewing information from public records.

Warrenton staff members were contacted Feb. 24, 2021, by the office of John Foote, a land-use attorney, advising them that he had a client interested in locating a data center in town. (The staff learned later the client was Amazon Web Services.) Shortly thereafter, the email contacts between Foote and the town dropped off for two months, but resumed in late April.

Town staffers did not officially notify the planning commission or council until Foote **appeared** before the planning commission on June 15, 2021, that Amazon was looking to locate in town and was interested in a specific site.

When Foote's office first contacted the town about a potential data center, Economic Development Director Rob Walton reported back that the client was looking at the **former wire factory on Falmouth Street**, according to town emails. Amazon ultimately dropped its interest in that site due to fiber-optic deficiencies.

On April 13, 2021, the town council voted unanimously to begin the process of amending the zoning code to allow data centers on a case-by-case basis. At the meeting, Semple asked, "Is there something that is inspiring us to move ahead?"

Town Manager Brandie Schaeffer replied this was a continuation of the council's look at data centers from back in 2017, which later stalled during the pandemic. She said, "We get inquiries almost every couple of months about a possible data center location" and that this was just to start a staff study. Schaeffer did not mention a specific data company or town site; at that point, Foote had not been communicating with the town for about two months.

The town council voted unanimously to have staff draft a zoning text amendment.

During April and May of 2021, staff worked to write the draft zoning amendment that would allow the council to consider data center applications.

According to Foote on June 15, he gave suggestions to the town staff on the language of the amendment. "We have worked with [economic development director Rob] Walton on text, we have given him suggestions," Foote said.

There is no indication of what influence, if any, Foote's suggestions had on the final text.

Neither then-town manager Schaeffer, who resigned earlier this month, nor economic development director Rob Walton, nor Foote responded to questions posed to them for this story. Semple agreed to be interviewed, but later Mayor Carter Nevill sent an email to council members saying that non-disclosure agreements that some officials had signed so they could meet with Amazon in July 2021, could preclude talking to the press.

On April 21, 2021, as the staff worked on the data center text amendment, Foote emailed Schaeffer to say he had a "possible draft" in hand and that his client would like to do a Zoom call with her and staff. The emails do not indicate whether the Zoom meeting took place, nor when the staff learned Foote's client was Amazon.

Schaeffer, who was out of the county, replied. "We dropped an initiation on the consent [agenda] last month," she wrote, so staff was now working on the text amendment at the direction of council. "Any research or sample codes are welcome."

This launched a flurry of emails between mainly Foote and Walton, with Walton accepting "any data or recommendations" and Foote asking to look at the town's text.

On May 25, 2021, Jessica Pfeiffer in Foote's office emailed the staff asking, "Is there any further coordination needed on the language?" She emailed later the same day, asking "Do you have draft language?" The planning commission met later that evening in a work session.

At that work session, the commission was asked to consider the zoning amendment recently initiated by the council. Commissioner James Lawrence asked why, noting there was "not an applicant seeking approval." The town's planning manager told him the "question [of data centers] comes up often, and council would like to be able to provide answers."

The planning commission took up the amendment at its next regular session on June 15. Foote, who was introduced as "the applicant," stood before the seven members of the Warrenton Planning Commission. He told them he had a client that had secured a contract on the Weissberg property at Blackwell Road and Lee Highway, and wanted to build a data center there. The client was Amazon Web Services.

For the planning commissioners, this was a surprise. They thought they were taking up a zoning amendment that would allow data centers in the town's industrial zone. They hadn't known there was a potential applicant to build one. The planning commission tabled a decision for 30 days.

Two days later, an Amazon official texted Walton, asking for a meeting to discuss the text amendment. "Time is of the essence," she wrote.

On June 29 Walton sent an email to the entire planning commission: "Amazon will be reaching out to you all to discuss the text amendment."

Amazon, apparently, was under some pressure. Prior to June 15, 2021, according to Foote, Amazon had contracted to **buy the Weissberg property** for $39.7 million, and according to a note from Schaeffer was nearing the end of study periods to determine if it should finalize its contract.

In early July, Amazon pressed to set up more meetings. An email indicated Schaeffer would meet with Amazon officials the week of July 5, 2021. Whether Schaeffer signed a non-disclosure agreement to meet with Amazon is not known, but Walton and zoning administrator Kelly

Machen did. By July 15, at least six members of the town council and at least three planning commissioners had met individually with town officials and Amazon representatives, according to notes taken by Schaeffer.

One was Ali Zarabi, a planning commissioner for 21 years. According to Schaeffer's notes, he objected to what he called "tailor made processing" for Amazon.

Zarabi also later expressed concerns about the writing of the amendment. He said a small town like Warrenton has limited expertise on its staff, and that consulting with a land-use expert like Foote might be OK in some circumstances. But Zarabi said that *if* town staff allowed him to help draft a zoning amendment for his client, that was, in his opinion "outside of the bounds of the ethical and professional way [for the town] to approach this."

As for Foote, Zarabi gave him credit for being "transparent" and working diligently for his client.

Regarding the private meetings with Amazon, Semple later wrote an email to Schaeffer saying the "optics" of town officials signing NDAs and meeting with the company did not look good. Still, he and other officials agree that private meetings with applicants are not unusual in Warrenton, as elected and appointed officials often meet one-on-one with businesses looking for zoning adjustments.

Susan Helander, a planning member for 14 years and currently the commission chair, described it as a practice that helps the business take the town's temperature and allows the public officials to learn more about what is wanted or offered. Of her private meeting with Amazon officials, she said, "I wouldn't look at it as it was sneaky. It was just more for information."

At the next planning commission meeting on July 20, Zarabi cast the lone vote against the text amendment to allow data centers. One of his biggest issues, he said, was that they were not mentioned in the town's comprehensive plan, passed in April. He said later that "data centers have never been discussed in three and a half years [of plan development] and were outside of what the public was aware of. Therefore it was not in the people's plan."

Commissioner Lawrence said he had once been opposed to the text amendment but had changed his mind. He said this amendment merely allowed the town to decide on future data center development. Given the potential tax benefits, he said the town ought to be allowed that

option.

Meeting on Aug. 10, the town council unanimously approved the text amendment. On Sept. 21, 2021, Amazon closed its land purchase deal.

On April 13, 2022, Foote's office sent the town an application for a special use permit for Amazon to put a data center at the Blackwell Road site.

Semple said that he now regrets his vote in favor of the text amendment, considering that data centers in Warrenton are a "big deal."

"Why didn't we take more time? Why didn't we explore the true implications? ... I ask myself, why did I vote for this amendment?" Semple said.



Data centers' secrecy often keeps residents in the dark

Exhibit 3:

Data Center Resolution
April 13, 2021

RESOLUTION TO RECOMMEND THE TOWN STAFF ANALYZE AND BEGIN THE PROCESS TO AMEND THE ZONING ORDINANCE TO ADD A DATA CENTER USE THE INDUSTRIAL (I) DISTRICT REGULATIONS WITHIN ARTICLE 3, SUPPLEMENTAL USE REGULATIONS WITHIN ARTICLE 9 AND ARTICLE 12 DEFINITIONS

WHEREAS, the Town of Warrenton's Zoning Ordinance allows certain uses within the Industrial (I) District; and

WHEREAS, Article 9 Supplemental Use Regulations and Article 12 Definitions may also need to be updated; and

WHEREAS, Staff is requesting the initiation of a Zoning Ordinance text amendment to consider adding a Data Center use to the I District;

WHEREAS, pursuant to Section 11-3.9.2 of the Town Zoning Ordinance allows Town Council to initiate a text amendment by Resolution.

NOW THEREFORE, be it resolved, that the Town Council of the Town of Warrenton directs Town Staff to analyze and prepare a text amendment to the Town Zoning Ordinance to amend the current I District Regulations.

Voting for:

Voting against:

Adopted:

Exhibit 4:

Fauquier Now News Article
February 15, 2023

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Later Allow
https://www.fauquiernow.com/news/business/warrenton-town-council-approves-amazon-data-center-proposal/article_3913e82e-ad0a-11ed-83f3-538a8a5bb411.html
Powered by iZooto

FEATURED

Warrenton Town Council approves Amazon data center proposal

James Jarvis, jjarvis@FauquierNow.com
Feb 15, 2023

1 of 3



The Warrenton Town Council voted 4-3 to approve Amazon Data Services' request for a special-use permit to build a data the Fauquier High School auditorium.

James Jarvis | FauquierNow

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

The Warrenton Town Council voted in the pre-dawn hours Wednesday to approve Amazon Data Services' request for a special-use permit to build a 220,000-square-foot data center at the intersection of Blackwell Road and Lee Highway in Warrenton.

Powered by iZooto

The decision signified the end of Amazon's involvement in the public approval process, which began in April 2022 when the tech giant filed its application with the town. When constructed, it will be the third data center located in Fauquier County.

But after the vote, many residents who attended the meeting vowed the fight was not over as they exited the Fauquier High School auditorium around 2:30 a.m.

Voting in favor of the resolution were council members Heather Sutphin, Ward 2, Brett Hamby, Ward 3, James Hartman, Ward 4, and Jay Heroux, Ward 5. Ward 2 representative William Semple and At-Large council members Paul Mooney and David McGuire opposed.



At-Large council member David McGuire voted against the proposal to build a data center in Warrenton during the council's Feb. 14 meeting.

James Jarvis | FauquierNow

Noise concerns linger

On Jan. 10, the council held a public hearing during which hundreds of residents poured into Town Hall to express opposition to the data center, including former Planning Commissioner Ali Zarabi, who abstained from voting on the proposal in early December.

The council decided to table a vote on the proposal until February so Amazon could review several preconditions drafted by staff, including noise, safety, and environmental mitigation measures. The town also added several guidelines – such as an annual noise test, site plan and Certificate of Occupancy permit for each development phase – to ensure Amazon complies with the town's ordinances.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

10 images capturing this week's historic Warrenton Town Council meeting

The Warrenton Town Council voted in the pre-dawn hours Wednesday to approve Amazon Data Services' request for a special-use permit to build a 220,000-square-foot data center at the intersection of Blackwell Road and Lee Highway in Warrenton. ***FauquierNow reporter James Jarvis captured these images.***

Powered by Widgetic



Oscar-winning actor Robert Duvall waits his turn to speak about the proposed Amazon data center during the Warrenton Town Council public hearing on Feb. 14.

James Jarvis | FauquierNow

But during the council's Tuesday morning work session, Semple said he saw several flaws with the application, including the noise mitigation measures, which was one of the biggest concerns expressed by residents.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

Semple said he was concerned an annual noise test needed to be more frequent for the town to determine whether the data center complies with its ordinance the other 364 days out of the year.

Powered by iZooto

“You could be in noncompliance, and nobody would know about it,” Semple said. “And that's really not much of a protection for the health, safety, and welfare of our citizens.”

But Jay Reinke, who is part of Amazon Web Services’ real estate development team, said that since the noise level was not going to change throughout the year, the test “should be indicative of all 365 days.”

Presenting a hypothetical scenario, Semple asked Reinke whether the town’s noise ordinance would be violated if Amazon had to turn on its approximately 24 generators in case of a power outage.

Reinke said if this happened, there is a possibility 24 generators running simultaneously would result in a violation. Still, he argued, the chance of a countywide power outage is “probably once in a lifetime.”



Ward 2 council member Bill Semple voted against the Amazon data center proposal on Feb. 14.

James Jarvis | FauquierNow

John Foote, Amazon's legal counsel and a land-use attorney with the Arlington-based firm Walsh Colucci Lubeley & Walsh, said nothing would stop the town from "running noise tests whenever it feels like."

But he noted doing a sound test every day wouldn't "really tell you much" due to ambient noise surrounding the facility from other sources like traffic

In the Amazon-commissioned sound study conducted by Warrenton-based Polysonics Acoustics & Technology Consulting Corporation, the company determined the "proposed mechanical equipment will meet the Zoning Ordinance, provided the proposed mitigation is used at the chillers and generators."

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

While presenting the report to council members, Chris Karner, a senior consultant for Polysonics, said Warrenton has one of the strictest noise ordinances he's seen in his decade-plus career.

Powered by iZooto

"If you look through the report, the background noise is more the data center, and the traffic noise is more of a source," Karner said. "The traffic is 30 [decibels] higher than the data center."

Debate over 'rural character'

Beyond noise concerns, many of the approximately 130 people signed up to speak – including renowned 92-year-old actor Robert Duvall – pleaded with council members to consider how a data center might impact the town's "rural character" and open the door to other more data centers.



Oscar-winning actor Robert Duvall waits his turn to speak about the proposed Amazon data center during the Warrenton Town Council public hearing on Feb. 14.

James Jarvis | FauquierNow

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto

Peggy DiVincenzo, who lives on Falmouth Street on the opposite side of town from where the data center is proposed, said she moved from Fairfax County five years ago to “have a sense of community again” similar to the small town where she grew up. DiVincenzo said constructing a data center would be a “turning point” for Warrenton.

“I think that you have this tremendous opportunity to be true to the vision of what Warrenton was set out to be many years ago,” she said. “But also to prevent the sense of community from dissipating and the sense of dissatisfaction from becoming prominent.”

But council member Heroux argued that constructing a data center would not threaten the county's rural character. He said the Amazon proposal is in a prime location to generate economic growth.



Warrenton resident Peggy DiVincenzo speaks during town council's Feb. 14 public hearing on the Amazon data center proposal.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

"That's why we have a service district, and that is done so the remainder of the county can remain rural, as I think we're doing a good job doing," he said. "The [Amazon special-use permit] does not ruin the rural and historical interests of the town. The interests of the town are commercial."

Powered by iZooto

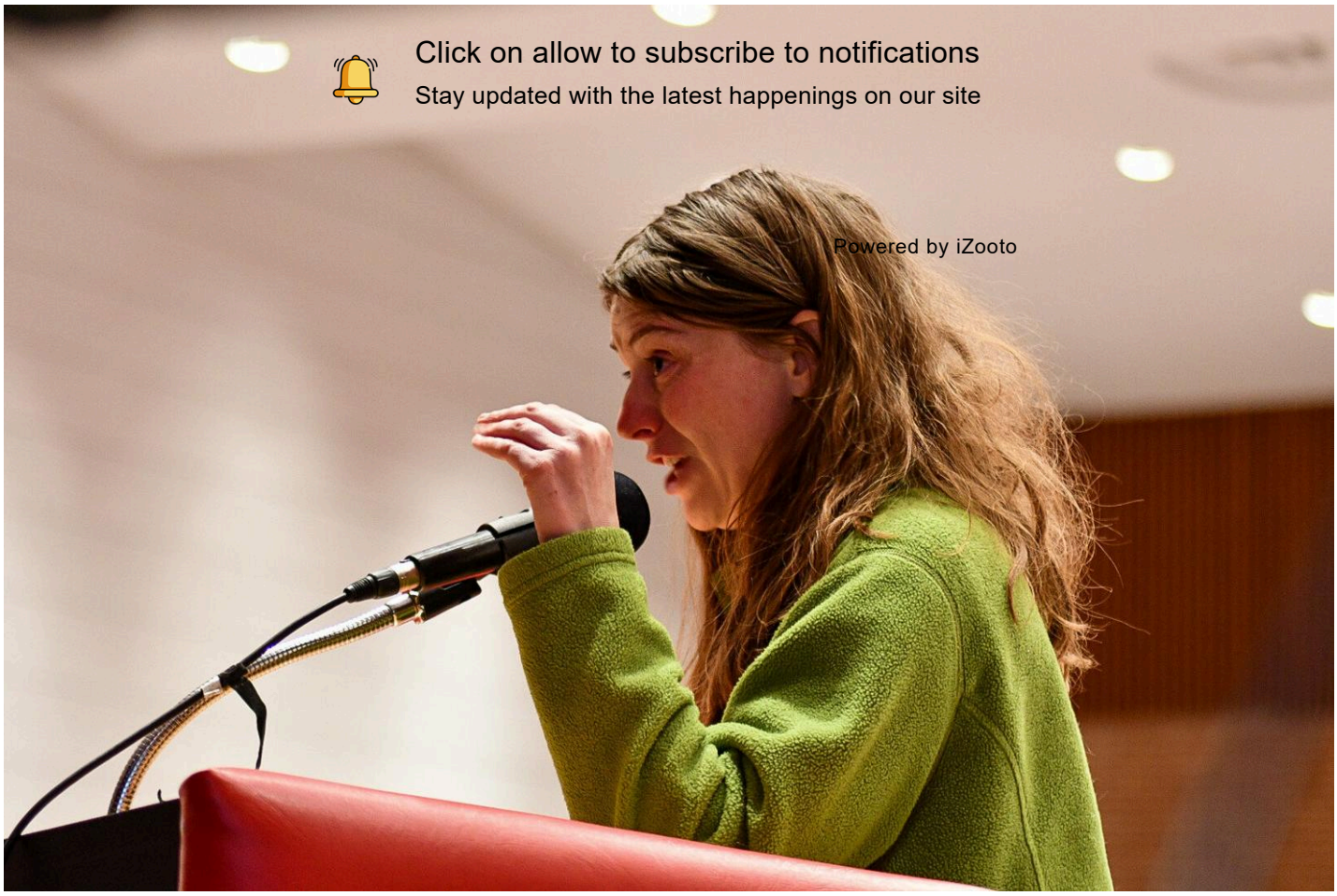
Heroux added, "We have great partners, such as Country Chevrolet, Sheetz, CVS, and the Hampton Inn. They employ our citizens. They pay taxes. There are over 300 [street] lights – I counted them – of all types at night as you enter the town of Warrenton. That's not rural. It's busy, and it's loud."

Another Fauquier resident, McKenzie Miller, who lives in Marshall District just south of Warrenton, said during the hearing she couldn't understand why something else could not go on that property, namely affordable housing, instead of a data center.

"I think if Amazon wants to buy this place, they can build affordable housing," Miller said. "Why can't you guys spend this much time agonizing over affordable housing?"

Fighting back tears, Miller argued this isn't the first time council members have chosen not to listen to residents and went forward with a plan that did not have a consensus. She referenced the 2040 Comprehensive Plan, which received notable opposition.

Miller urged the council to avoid repeating the same mistake.



With tears in her eyes, Fauquier County resident McKenzie Miller pleads with the Town Council not to approve Amazon's application for a special use permit to build a 220,000-square-foot data center several miles from her home south of Warrenton.

James Jarvis | FauquierNow

“It just rattles me to my core the fact that I stood in front of you guys during the Comprehensive Plan, and I felt like you were just looking at me but not paying attention,” Miller said. “For somebody who has a disability and lives on a small budget, I'm afraid for my future.”

Council member Hamby said the town has previously tried to pursue several other options – from the Warrenton Greene development proposal to a Walmart – but each time, they failed.

Hamby said the biggest problem with the property is that the Virginia Department of Transportation only allows access to the property from Blackwell Road, meaning that if the town approved a bustling commercial or residential

development, it could create significant traffic congestion issues.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site

Tax benefits

Hamby also noted a data center brings in a lot of tax revenue without the town needing to put more money toward additional services like it would for residential developments.

Powered by iZooto

According to estimates from Fauquier County Commissioner of Revenue Eric Maybach, the $550 million project would generate approximately $4 million in tax revenue for the town over the next five years, or about $900,000 annually on average.

The town's adopted fiscal 2023 budget was approximately $31.3 million.



Hundreds of town and county residents attended the Amazon data center public hearing Feb. 14 at the Fauquier High School auditorium.

James Jarvis | FauquierNow

According to Heroux, $900,000 is enough to pay for the town's refuse and recycling expenses, 60% of the Warrenton Aquatic & Recreation Center's operating costs and nearly 60% of the costs for its legal, human resource and finance departments.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto

"[Amazon] has not asked for tax breaks. They're investing $550 million in our town. That tax revenue also goes to the county that goes back into our schools," Heroux said.

Questions over emails persist

Before the final vote, council members McGuire, Mooney and Semple said they were worried that members were making a decision without knowing all the facts, including what was said in the 3,142 emails former Town Manager Brandie Schaeffer exchanged with Amazon representatives.

The town is currently in the midst of a legal battle with the nonprofit Citizens for Fauquier County over the withholding of the emails in question.

Schaeffer left her position with the town last year and went to work for Amazon shortly thereafter.

Mooney motioned for the council to approve a resolution that would have allowed members – though not the public – to review the correspondence before a final vote. But the motion was struck down in a 4-3 vote, with Hamby, Hartman, Sutphin, and Heroux voting against it.

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto



At-Large council member Paul Mooney voted against the proposal to build a data center in Warrenton during the council's Feb. 14 meeting.

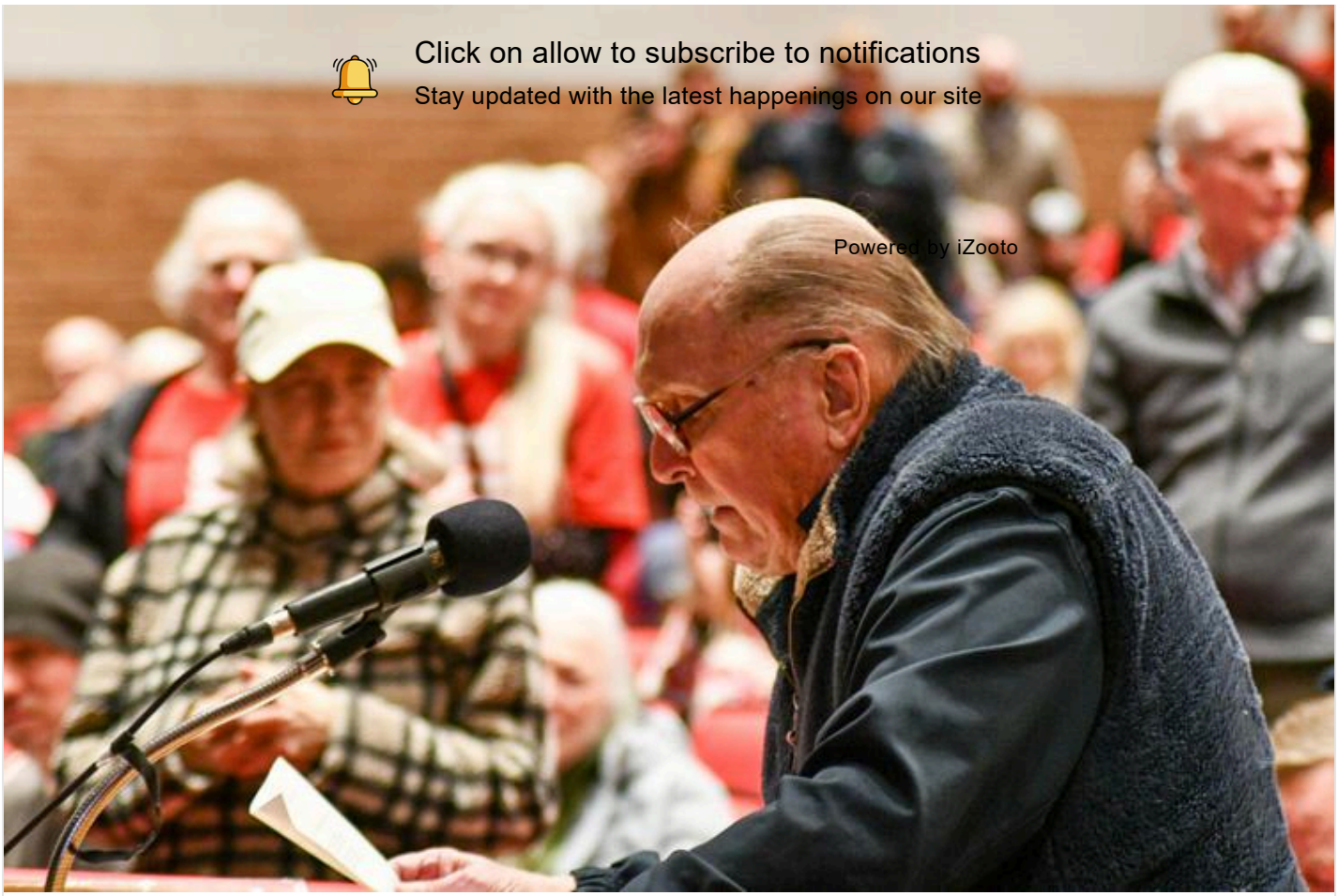
James Jarvis | FauquierNow

However, the council eventually approved Mooney's previous resolution, which calls for members to see the emails, though the review would not occur until after the final vote.

As the night was winding down, Semple, Mooney, and McGuire expressed disappointment and concern about the council's decision. But McGuire vowed "the fight is not over."

Correction: *This story has been updated and reflects the vote took place early Wednesday, not Tuesday night.*

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto

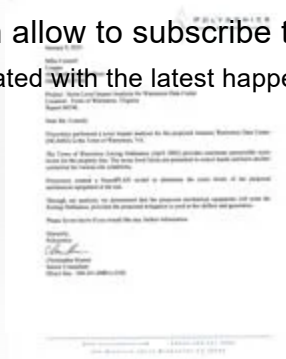


Oscar-winner Robert Duvall attends Warrenton Town Council meeting to oppose Amazon data center



Amazon application preconditions
Feb 15, 2023

Click on allow to subscribe to notifications
Stay updated with the latest happenings on our site
Powered by iZooto



Polysonics sound study Amazon
Feb 15, 2023



UPDATE: Warrenton residents, environmental nonprofit file lawsuit in hopes of overturning Amazon data center decision

James Jarvis

Exhibit 5:

Emails btw. J. Foote and Town
February 16–27, 2023

From: "Foote"
Sent: Mon, 27 Feb 2023 16:43:34 +0000
To: "'Stephen Clough'" <sclough@warrentonva.gov>; "Martin Crim" <mcrim@vfnlaw.com>; "Tommy Cureton" <tcureton@warrentonva.gov>; "Rob Walton" <rwalton@warrentonva.gov>
Cc: "Denise Harris" <dharris@warrentonva.gov>; "Westover, Matthew" <mwestover@thelandlawyers.com>; "Thomas, Joanna E." <jthomas@thelandlawyers.com>; "Hardy, Michele" <mhardy@thelandlawyers.com>
Bcc: "sclough1@warrentonva.gov" <sclough1@warrentonva.gov>
Subject: RE: A Modest Proposal

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

Michele – could you please send Stephen contacts at a couple of the Reporters that we have used of late. Thanks.

John H. Foote | Shareholder
Walsh, Colucci, Lubeley & Walsh, P.C.
4310 Prince William Pkwy | Suite 300 | Prince William, VA 22192
Phone: 703.680.4664 x5114 | Fax: 703.680.6067 | Cell: 703-801-5075
jfoote@thelandlawyers.com | www.thelandlawyers.com

AV® Preeminent™ Rated
Named Lawyer of the Year by *Best Lawyers* for Land Use and Zoning Litigation, 2013 and Land Use and Zoning Law, 2015 – 2018
Named to the *Best Lawyers* in America, 1995 – 2021, for Land Use and Zoning Law, Litigation - Land Use and Zoning, Litigation - Municipal, Litigation - Real Estate, Municipal Law, and Real Estate Law
Named to *Super Lawyers*, 2020, for Land Use/Zoning and Litigation
Named to *Virginia Business* magazine, Virginia Legal Elite 2020 for Land Use & Zoning and Litigation
Named to the *U.S. News & World Report*, *Best Law Firms*, 2016 – 2021
Ranked in *Chambers*, Band 1, Real Estate: Zoning/Land Use Attorney, Northern Virginia, 2007 – 2021
Ranked in *Chambers*, Band 1, Real Estate: Zoning/Land Use Firm, Northern Virginia, 2021

Confidentiality notice:

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to which they are addressed.

If you are not the intended recipient, please do not read, copy or
retransmit this communication but destroy it immediately.
Any unauthorized dissemination, distribution or copying of this communication
is strictly prohibited. This email does not establish an attorney-client relationship.

From: Stephen Clough <sclough@warrentonva.gov>
Sent: Monday, February 27, 2023 10:06 AM
To: Martin Crim <mcrim@vfnlaw.com>; Tommy Cureton <tcureton@warrentonva.gov>; Rob Walton <rwalton@warrentonva.gov>; Foote, John <jfoote@thelandlawyers.com>
Cc: Denise Harris <dharris@warrentonva.gov>; Westover, Matthew <mwestover@thelandlawyers.com>; Thomas, Joanna E. <jthomas@thelandlawyers.com>
Subject: RE: A Modest Proposal

External Sender. Be aware of links,
attachments and requests.

Mr. Foote,

Do you or your firm have a recorder that they would typically use for a proposal such as this?

The Town is interested in your proposal and would like to start the process of engaging someone.

Stephen Clough
Town Clerk, FOIA Officer
Town of Warrenton, VA

21 Main Street
Warrenton, VA 20186
M: (540)-714-9270
warrentonva.gov

CONFIDENTIALITY NOTICE: This electronic message is intended to be viewed only by the individual or entity to whom it is addressed. It may contain information that is privileged, confidential and exempt from disclosure under applicable law. Any dissemination, distribution or copying of this communication is strictly prohibited without the permission of the sender. If the reader of this message is not the intended recipient, or if you have received this communication in error, please notify the sender immediately by return e-mail and delete the original message and any copies of it from your computer system.

From: Foote, John <jfoote@thelandlawyers.com>
Sent: Thursday, February 16, 2023 6:59 PM

To: Martin Crim <mcrim@vfnlaw.com>
Cc: Westover, Matthew <mwestover@thelandlawyers.com>; Thomas, Joanna E. <jthomas@thelandlawyers.com>
Subject: A Modest Proposal

It is altogether likely that you should begin putting together the Legislative Record of the AWS application since the likelihood of litigation is very high. We have been through this many times, and I know you are no neophyte. Perhaps we can discuss how best to handle such things as the Agenda Reviews and public hearings. In Culpeper, the County had the meetings transcribed, but I don't know that the entire Council hearings necessarily need be. I think a court reporter might commit seppuku halfway through the 8 hours. The Agenda Reviews should at least be considered for a court reporter and the videos of all can be part of the record. What might be done is to transcribe the actual Council discussion on the 14th, as well as the video. We can discuss further, but the record will be extensive. We have so far won every battle to have the record included through Oyer, especially since Byrne, but frankly before that as well. I am reaching out now because I expect that there will be some labor involved. I haven't cleared it yet with my folks, but I very much expect that they will share in the expense. I am also assuming you might be handling, but we also know the Town has, or has had, the land use rider on its VML policy.

John H. Foote | Shareholder
Walsh, Colucci, Lubeley & Walsh, P.C.
4310 Prince William Pkwy | Suite 300 | Prince William, VA 22192
Phone: 703.680.4664 x5114 | Fax: 703.680.6067 | Cell: 703-801-5075
jfoote@thelandlawyers.com | www.thelandlawyers.com

AV® Preeminent™ Rated
Named Lawyer of the Year by *Best Lawyers* for Land Use and Zoning Litigation, 2013
Named to the *Best Lawyers* in America, 1995 – 2023, for Land Use and Zoning Law, Litigation - Land Use and Zoning,
Litigation - Municipal, Litigation - Real Estate, Municipal Law, and Real Estate Law
Ranked in *Chambers*, Band 1, Real Estate: Zoning/Land Use Attorney, Northern Virginia, 2007 – 2023

Confidentiality notice:

Please be advised that this e-mail and any files transmitted with it are confidential attorney-client communication or may otherwise be privileged or confidential and are intended solely for the individual or entity to which they are addressed. If you are not the intended recipient, please do not read, copy or retransmit this communication but destroy it immediately. Any unauthorized dissemination, distribution or copying of this communication is strictly prohibited. This email does not establish an attorney-client relationship.

information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete it and immediately notify us by email or by phone. Thank you.

Exhibit 6:

Order Denying the Pleas in Bar & Overruling the Demurrers to Counts I and II, etc.
February 27, 2024

V I R G I N I A:

IN THE CIRCUIT COURT FOR FAUQUIER COUNTY
TWENTIETH JUDICIAL CIRCUIT

CHARLES AND MARYGAY CROSS, *et al.*,	)	
	)	
Plaintiffs-Petitioners,	)	
	)	
v.	)	Case No. CL23000128-00
	)	
THE TOWN COUNCIL FOR THE TOWN OF WARRENTON, *et al.*,	)	
	)	
Defendants-Respondents.	)	

ORDER DENYING THE PLEAS IN BAR & OVERRULING THE DEMURRERS TO COUNTS I AND II, BUT SUSTAINING THE DEMURRERS TO COUNTS III–VIII OF THE FIRST AMENDED PETITION, WITH LEAVE TO AMEND

On December 13, 2023, appeared the Plaintiffs-Petitioners (collectively, the "Plaintiffs") and Defendants-Respondents (collectively, the "Defendants"), by counsel, to be heard on the Responsive Pleadings of Defendants to the First Amended Petition for Review of In Re: Town of Warrenton, Special Use Permit 22-03, Complaint for Declaratory and Injunctive Relief, and Verified Petition for Writ of Mandamus, with Exhibits A through O, which was accepted for filing by order of August 21, 2023, and contains eight Counts (the "First Amended Petition").

The Responsive Pleadings consist of: (1) Amazon Data Services, Inc.'s Demurrer to the First Amended Complaint and Petition for Review, filed on September 8, 2023 ("Amazon's Demurrer"); (2) Amazon Data Services, Inc.'s Plea in Bar to the First Amended Complaint and Petition for Review, also filed on September 8, 2023 ("Amazon's Plea"); (3) the Town's Demurrer to Plaintiff-Petitioners' First Amended Petition and Complaint, filed on September 11, 2023 (the "Town Defendants' Demurrer"); and (4) the Town Defendants' Plea in Bar to the First Amended

Complaint and Petition for Review, also filed on September 11, 2023 (the "Town Defendants' Plea") (collectively, the "Responsive Pleadings").

The Town Defendants' Demurrer seeks dismissal of all Counts for want of standing, arguing that the First Amended Petition lacks sufficient factual allegations of the Plaintiffs' standing to challenge either the Special Use Permit 22-03 (the "Data Center SUP") or the zoning ordinance amendment of the Town of Warrenton approved by the Town Council on August 10, 2021 to allow a data center use with the approval of a special use permit (the "Data Center Zoning Amendment"). Plaintiffs argue that the First Amended Petition contains sufficient factual allegations to demonstrate Plaintiffs' ownership or occupation of real property within or in close proximity to the Property that is the subject of the Data Center SUP, establishing their direct, immediate, pecuniary, and substantial interest in the decision issuing the Data Center SUP, and to demonstrate a particularized harm to, and imposition of a burden upon, Plaintiffs' personal or property rights that is different from that suffered by the public generally and that arises out of the decision to approve the Data Center Zoning Amendment and issue the Data Center SUP.

Both the Town Defendants' Demurrer and Amazon's Demurrer argue that Count I of the First Amended Petition, challenging the Data Center Zoning Amendment as void *ab initio* on the ground that the ordinance was initiated in violation of Virginia Code § 15.2-2286(A)(7), and so also challenging the Data Center SUP issued under the Data Center Zoning Amendment as void *ab initio*, fails to state cause of action or to allege facts upon which the relief demanded may be granted under Virginia law.

Both the Town Defendants' Demurrer and Amazon's Demurrer also argue that Count II of the First Amended Petition, seeking a writ of mandamus against Town Officials to compel their denial of any approvals, licenses, or permits sought by Defendant Amazon Data Services, Inc.

pursuant to the authority of the Data Center Zoning Amendment or the Data Center SUP, fails to state cause of action or to allege facts upon which the relief demanded may be granted under Virginia law.

Additionally, all of the Responsive Pleadings urge that Counts I and II, contesting the lawfulness of the initiation of the Data Center Zoning Amendment and the lawfulness of the Data Center SUP issued under its authority, are barred because filed more than thirty (30) days after the Data Center Zoning Amendment was approved by the Town Council of the Town of Warrenton, and so beyond the appeal period provided in Virginia Code § 15.2-2285(F).

Finally, both the Town Defendants' Demurrer and Amazon's Demurrer also urge that Counts III, IV, V, VI, VII, and VIII of the First Amended Petition, raising various challenges to the lawfulness of the Data Center SUP, fail to state a cause of action or to allege facts upon which the relief demanded may be granted under Virginia law.

Pursuant to a Scheduling Order entered on August 25, 2023, the Defendants filed memoranda in support of the Responsive Pleadings on November 6, 2023, and the Plaintiffs filed a memorandum in opposition thereto on November 29, 2023. Upon consideration of the First Amended Petition, the above-referenced responsive pleadings and memoranda, and the arguments of counsel at the hearing on December 13, 2023, a transcript of which is attached hereto and incorporated herein, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. For all of the reasons appearing on the record, the First Amended Petition contains sufficient factual allegations of the Plaintiffs' standing to challenge both the Data Center SUP and the Data Center Zoning Amendment on all Counts stated in the First Amended Petition. Accordingly, the Town Defendants' Demurrer, to the extent it contests the sufficiency of the allegations of standing in the First Amended Petition, is **HEREBY OVERRULED**.

2. For all of the reasons appearing on the record, Count I of the First Amended Petition, challenging the Data Center Zoning Amendment and the Data Center SUP issued thereunder as void *ab initio*, both states a cause of action and alleges facts upon which the relief demanded may be granted under Virginia law. Accordingly, the Town Defendants' Demurrer and Amazon's Demurrer, to the extent either contests the sufficiency of the allegations in the First Amended Petition that the Data Center Zoning Amendment is void *ab initio* because initiated in violation of Virginia Code § 15.2-2286(A)(7) and that the Data Center SUP is also void *ab initio* because issued under the Data Center Zoning Amendment, are **HEREBY OVERRULED**.

3. For all of the reasons appearing on the record, Count II of the First Amended Petition also states a cause of action and alleges facts upon which the relief demanded may be granted under Virginia law. Accordingly, the Town Defendants' Demurrer and Amazon's Demurrer to Count II are **HEREBY OVERRULED**.

4. For all of the reasons appearing on the record, Virginia Code § 15.2-2285(F) does not bar Counts I or II as untimely because brought more than thirty (30) days after the Data Center Zoning Amendment was approved by the Town Council of the Town of Warrenton. Accordingly, to the extent the Responsive Pleadings contest the timeliness of the challenges brought in Counts I and II, they are both **HEREBY OVERRULED** and **DENIED**.

5. For all of the reasons appearing on the record, the Town Defendants' Demurrer and Amazon's Demurrer to Counts III, IV, V, VI, VII, and VIII of the First Amended Petition are **HEREBY SUSTAINED**, those Counts are **HEREBY DISMISSED WITHOUT PREJUDICE** and the Plaintiffs are **HEREBY GRANTED** leave to amend the First Amended Petition by filing a Second Amended Petition within twenty-one (21) days after the date of entry of this Order, should they so choose.

6. For the avoidance of doubt, any part of the Responsive Pleadings not specifically addressed is **HEREBY OVERRULED** and **DENIED**.

7. The Defendants are **HEREBY ORDERED** to file and serve their responsive pleadings within twenty-one (21) days after receipt of the Second Amended Petition, if any. If Plaintiffs do not file a Second Amended Petition, Defendants shall file and serve their Answers to Counts I and II of the First Amended Petition within twenty-one (21) days after receipt of Plaintiffs' notice of intent to stand upon the First Amended Petition.

8. The discovery obligations of Amazon, previously stayed by order entered October 31, 2023, shall remain **STAYED** until either the date of entry of an order resolving any further motion, demurrer or other plea filed by Amazon to Plaintiffs' Second Amended Petition, if any, or the date of Amazon's receipt of Plaintiffs' notice of intent to stand upon the First Amended Petition, upon the happening of either event such stay shall expire without further action or order of the Court.

9. The Clerk shall cause a certified copy of this entered order to be transmitted to all counsel of record; Endorsements of counsel are dispensed with per Rule 1:13- any counsel may, with leave herein granted, file a certificate of objections to the court's order within 30 days of the entry of this order.

SO ORDERED.

THIS CAUSE IS CONTINUED.

ENTERED this 27th day of February, 2024

Circuit Court Judge

James P. Fisher, Judge

SEEN AND OBJECTED TO ALL ADVERSE RULINGS FOR ALL OF THE REASONS APPEARING ON THE RECORD

1:13

Dale G. Mullen (VSB No. 48596)
dmullen@whitefordlaw.com
Michael H. Brady (VSB No. 78309)
mbrady@whitefordlaw.com
Michelle E. Hoffer (VSB No. 97029)
mhoffer@whitefordlaw.com
Zanas D. Talley (VSB No. 97736)
ztalley@whitefordlaw.com
WHITEFORD, TAYLOR & PRESTON L.L.P.
Two James Center
1021 East Cary Street, Suite 1700
Richmond, Virginia 23219-4000
Telephone: 804.799.7854 / 804.977.3303 / 804.807.7385 / 804.807.7382
Facsimile: 804.762.6863 / 804.762.6864 / 804.593.1363 / 804.593.1365

Counsel for Plaintiffs-Petitioners

SEEN AND

1:13

Martin R. Crim, Esq. (VSB No. 33385)
SANDS ANDERSON PC
725 Jackson Street, Suite 217
Fredericksburg, VA 22401
mcrim@sandsanderson.com
Telephone: (703) 663-1720

John D. McGavin, Esq. (VSB No. 21794)
jmcgavin@mbbtklaw.com
Heather Bardot, Esq. (VBS No. 37269)
hbardot@mbbtklaw.com
William W. Miller (VSB No. 97125)
wmiller@mbbtklaw.com
MCGAVIN, BOYCE, BARDOT, THORSEN, & KATZ, PC
9990 Fairfax Boulevard, Suite 400
Fairfax, VA 22030
Telephone: (703)-385-1000
Facsimile: (703)-385-1555

Counsel for Defendant-Respondent, Town of Warrenton, Virginia, et al.

SEEN AND OBJECTED TO as to those portions of the Order overruling Amazon's Demurrer and Plea in Bar for all the reasons stated in the pleadings, briefs, and on the record.

1:13

John H. Foote, Esq. (VSB No. 14336)
jfoote@thelandlawyers.com
Matthew A. Westover, Esq. (VSB No. 82798)
mwestover@thelandlawyers.com
Joanna E. Thomas, Esq. (VSB No. 97256)
jthomas@thelandlawyers.com
WALSH, COLUCCI, LUBELEY & WALSH, P.C.
4310 Prince William Parkway, Suite 300
Prince William, Virginia 22192
Telephone: (703)-680-4664
Facsimile: (703)-680-2161

Counsel for Defendant-Respondent, Amazon Data Services, Inc.

CC: J. Foot
M. Brady
M Crion
d. McGavin
2/27/23

Exhibit 7:

Motion to Defer Action – Citizens' BZA Appeal
March 4, 2025

TOWN OF WARRENTON
Department of Community Development
PO BOX 341
WARRENTON VIRGINIA 20188
http://www.warrentonva.gov
landdevelopment@warrentonva.gov
(540) 347-1101

March 5, 2025

Mr. Michael Brady
Whiteford, Taylor, & Preston LLC
1021 E. Cary Street
Suite 1700
Richmond, VA 23219

Re: Board of Zoning Appeals Deferral of Hearing on BZA #2024-1

Dear Mr. Brady:

On March 4, 2025, at their regular meeting, the Board of Zoning Appeals motioned to defer the appeal hearing for the approval of Site Development Plan (Application number SDP-23-6). A quorum was present at the meeting. The Board of Zoning Appeals voted (3-0) to defer action on BZA #2024-1 per the motion to defer action dated March 4, 2025 (attached).

Any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer or any officer, department, board, or bureau of the Town may present to the circuit court of the county a petition specifying the grounds on which aggrieved within thirty (30) days after the filing of the decision in the office of the Board. If you have any questions about the letter, please do not hesitate to contact me at 540-347-1101.

Respectfully,

Heather Jenkins, PLA, CZA
Zoning Administrator & Secretary to the Board of Zoning Appeals
Town of Warrenton

CC: File

MOTION TO DEFER ACTION

APPEAL OF ZONING ADMINISTRATOR'S APPROVAL OF SITE DEVELOPMENT PLAN

BZA #2024-1

BZA MEETING DATE: MARCH 4, 2025

In Application BZA #2024-1, I move to defer the appeal hearing for the approval of Site Development Plan SDP-23-6 until such time as the Circuit Court renders a decision in the legal proceedings relevant to this request.

COURT REPORTER TRANSCRIPT

Transcript of Public Meeting

Date: February 3, 2026
Case: Cross, et al. -v- The Town of Council of the Town of Warrenton

Planet Depos
Phone: 888.433.3767
Email: clientservices@planetdepos.com
planetdepos.com
Michigan #8598 | Nevada #089F | New Mexico #566

V I R G I N I A:

FAUQUIER COUNTY CIRCUIT COURT

IN RE:	:	
CHARLES CROSS, MARYGAY CROSS, KEVIN HAMPTON,	:	
PLAINTIFFS,	:	
v.	:	Case No.:
TOWN COUNCIL OF WARRENTON, TOWN OF WARRENTON, VIRGINIA AMAZON DATA SERVICES,	:	CL23000128-00
DEFENDANTS.	:	

PUBLIC MEETING

Warrenton, Virginia

Tuesday, February 3, 2026

5:00 p.m.

(CONTINUED FROM PREVIOUS PAGE)

Job No.: 619171

Pages: 1 - 74

Recorded By: Lee Utterback-Pair

PUBLIC MEETING, held at the offices of:

Warrenton Town Hall
21 Main Street
Warrenton, Virginia 20186

Pursuant to agreement, before
Lee Utterback-Pair, Notary Public in and for the
Commonwealth of Virginia.

A P P E A R A N C E S

ON BEHALF OF THE TOWN OF WARRENTON:

CHAPMAN PETERSEN, ESQUIRE
PATRICK R. CORISH, ESQUIRE
CHAP PETERSEN & ASSOCIATES, PLC
3970 Chain Bridge Road
Fairfax, VA 22030
(571) 459-2510

ON BEHALF OF AMAZON DATA SERVICES:

GORDON D. TODD, ESQUIRE
ABIGAIL SCHEPER, ESQUIRE
SIDLEY AUSTIN, LLP
1501 K Street
Washington, DC 20005
(202) 736-8760

A P P E A R A N C E S (CONTINUED)

ON BEHALF OF CHARLES CROSS, ET AL.:

MICHAEL H. BRADY, ESQUIRE
WHITEFORD TAYLOR PRESTON, LLP
TWO JAMES CENTER
1021 E. Cary Street, Suite 2001
Richmond, VA 23219
(804) 977-3306

ON BEHALF OF THE BOARD OF ZONING APPEALS:

MATTHEW A. CRIST, ESQUIRE MAC PLLC
9200 Church Street, Suite 200
Manassas, VA 20110
(571) 551-6859

A P P E A R A N C E S (CONTINUED)

ALSO PRESENT:

MELEA MAYBACH, CHAIR

A. VAN BAGGETT, VICE CHAIR

KENNETH "CHARLIE" MULLISS, BOARD MEMBER

SUSAN HELANDER, BOARD MEMBER

ELIZABETH SCULLIN, BOARD MEMBER

HEATHER JENKINS, ZONING ADMINISTRATOR

AMBER HEFLIN, ZONING OFFICIAL

P R O C E E D I N G S

MS. MAYBACH: And we are going to start the public meeting for BZA 25-3, application for -- for the appeal. Okay. Staff is -- according to your rules of procedure, the first step is going to be to hear from Town staff. Town staff does have an attorney present, Mr. Chap Petersen, to give a presentation. The presentation will be approximately 20 minutes.

Chap, when the lectern light turns yellow, you will have approximately three minutes to conclude your statements.

MR. PETERSEN: All right. All right. Well, I'll start running here. All right. Let me introduce my associate, Patrick Corish, who is going to wire up the PowerPoint presentation.

MR. CORISH: (indiscernible).

MR. PETERSEN: Okay. What do I do?

MR. CORISH: Make sure you're using this (indiscernible)

MR. PETERSEN: Okay. All right.

So let me begin, first of all, by

saying it's going to be (indiscernible). I've often said that power corrupts, but PowerPoint corrupts absolutely. So with that being said, let me move on to the presentation. Tonight is the BZA appeal hearing for the petition by Amazon Data Service for a determination of vested rights under Virginia Code 15.2-2307.

Patrick, can you go ahead and move me to the next --

MR. CORISH: I can pull that off there --

MR. PETERSEN: There you go.

MR. CORISH: Okay.

MR. PETERSEN: Okay. A petition for vested rights. This is a -- a statutory provision, subject Virginia Code 15.2-2307. It's an appeal by Amazon Data Services from the Town of Warrenton zoning administrator's decision dated October 24th, 2025, which denied their petition seeking vested rights from the 2022 rezoning of the property on Blackwell Road.

Next slide.

Just for background, the background -- the property is a property on Blackwell Road. It's approximately 42 acres. It's located basically down the hill, across the highway, and up the hill in Warrenton's Industrial District. That's a -- an overhead view, and you can see it's been zoned industrial.

Thank you.

The context of the petition, we're going to go through the background of the zoning itself, the -- the -- then the pending litigation, and finally, the applicable law.

Next slide.

Okay. This really starts with a zoning ordinance change, what happened in 2021. On August 10th, 2021, the Town of -- council for Town of Warrenton amended the zoning ordinance to allow data centers as a permitted use within the Town's industrial sector. The matter was placed on the consent agenda. There was no debate. And there has been an issue of whether or not there was proper notice or a statement of public

purpose. That's not for us to decide, that's going to be decided by a Circuit Court, but that's basically the -- sort of the first step in this drama. That ordinance, having been amended on September 21st, 2021, approximately six weeks later, Amazon purchased the property.

Next slide.

Okay. In 2022, Amazon filed an application for a special use permit to build a data center on the property that is SUP 22-03. Again, we could spend all night talking about that process. You all, if you're citizens of this Town, and I know you are, you know -- know better than I do. But eventually, on February 14th, 2023, after a lengthy public hearing that went into the next day, the Town council approved the SUP 2203 on a four to three vote.

Next slide.

That approval was subject to a 30-day appeal. Every legislative -- so I'll -- I'll get into -- every legislative decision on zoning ordinance is appealed -- or can be

appealed to the Circuit Court within 30 days. That's statutory law. On March 16th, 2023, multiple property owners filed suit in Fauquier County Circuit Court. That's the case of Charles and Mary Gay Cross v. The Town of Warrenton, which is CL23-128, which is pending at the Circuit Court across the street. The suit was timely filed under Section 15.2-2288 -- 85F of the Virginia Code, which permits aggrieved citizens to challenge zoning decisions. The law says within 30 days, but if the 30-day runs out on a weekend, then it's the next business day. The complaint now amended challenges the council's actions in passing the 2021 zoning amendment in SUP-2203, and essentially said that those actions were void ab initio.

Next slide.

Currently, the cross-litigation is set for a three-day trial on March 9th, 2026, so approximately five weeks from today, in the Fauquier County Circuit Court. I believe it'll be in front of Judge Fisher. The parties just

entered an order about a week ago, which narrowed down the issues. In fact, they -- they set it from a seven day to a three-day trial. Standing has been conceded so that the petitioners are deemed to be aggrieved citizens and properly before the Court. Preliminary motions, such as demurrers, have been decided. So certain issues have been dismissed, certain issues are going to be decided by the Court. And the primary contested issue -- and by the way, the counsel for the plaintiffs is here, and he can answer these questions better than I can. But the primary contested issue is whether the 2021 zoning ordinance amendment allowed data -- allowing data centers was properly enacted. If not, the ordinance could be found to be void ab initio, which means, effectively, that use was never permitted.

Next slide.

Back to Amazon.

Go backwards, Patrick.

MR. CORISH: Okay.

MR. PETERSEN: On March 22nd, 2023, Amazon filed a site plan for construction of the data center at the -- at the property. That was SDP-23-6. This happened, notably, a week after the cross lawsuit had been filed. So the lawsuit had been properly filed. It was in court when they went ahead and filed for their site plan determination. On April 18, 2024, the Town approved Amazon's application for a site development plan for the data center, and that was SDP-23-6.

Next slide.

Upon the issuance of SD-23-6 (sic) in April 2024, citizens, who I believe were coextensive with the group of plaintiffs in the cross case, filed a BZA appeal, citing the same objections from the cross-litigation. The Town did not immediately transmit the appeal, so the citizens filed a -- a suit, which is sort of, in fancy language, called a writ of mandamus, to force the BZ act -- bZA to act on the petition. The Town later filed its own action to prevent

the BZA from acting. All of this was filed back in 2024. The bottom line is, no action was taken, so those two suits are actually both still pending at the Circuit Court, but no action was taken because --

Next slide, please.

In the cross litigation, the cross plaintiffs had moved for an injunction to stop development of the -- the property. This happened after the site plan was issued. While the case was pending, that was the notice for a hearing in January of 2025 for January 21 and 22. And on January 14th, the parties entered an agreed order stating that the parties have agreed to maintain the status quo. And I have a copy of the agreed order, I think it's probably in your packet. But the bottom line is, the purpose of the agreed order was basically, freeze everything in place until we have a determination from the Circuit Court that the zoning amendment had been properly enacted, and the rezoning was proper, and this was all legal. The specific language of

the Court order said -- ordered that, Amazon shall not seek, nor shall the Town approve further permits or approvals related to the construction of a data center on the property, including, without limitation, land disturbance permits or building permits, nor shall Amazon further construction of the data center on the -- on the property until a final order has been entered.

So the order basically means what it says, that the parties agreed to stand down until this issue had been decided by the Circuit Court, which, again, is going to happen next month. All right. A new town council was elected November 5, 2024. And the new town council -- and I was the town attorney for -- for -- for a bit. One of their objections -- or one of their objectives was to, basically, readjust the zoning ordinance to take away their use of data centers. On July 8th, 2025, the new council voted unanimously to amend the zoning ordinance to remove data centers as a permitted use -- and

I should've said in industrial areas. The amendment is prospective. It has no impact on the pending litigation and has not cut off the rights of existing SUP holders. I actually went back through the minutes, and I didn't have a chance to go back through all the videos.

But I was the town attorney. I was asked about it. And clearly, the fact that the ordinance was changed in 2025 would not affect substantive rights in 2022 or 2023, because they -- first of all, they were already under challenge. So that zoning ordinance change that happened last year was prospective. The bottom line is, the reason that the current data center is being challenged and does not have vested rights has to do with the issues in the pending litigation.

Next slide.

This is just some general legal statements. As a general proposition, statutes are not to be applied retrospectively, but the legislature may pay us retrospective libes --

laws, provided they do not impair the obligation of contracts or disturb vested rights. Again, just by law, a law that you pass in 2025 is not going to take away somebody's rights that they already enjoy in 2023. Notably, no one said that the action violated the Court's injunction. And it didn't violate the Court's injunction, again, as it did not apply to what had already happened in the past.

Okay, next slide.

Okay, moving on to the applicable law. On July 25th, 2025, Amazon filed a request with the town zoning administrator for determination of vested rights under Virginia Code 15.2-2307. The petition seeks an affirmative recognition of vested rights in the property that SUP-22-03 is valid. Again, this request is contrary to the January 2025 injunction, as -- as well as the pending litigation and cross, because, effectively, it's being asked to bypass that litigation, so you know they have a vested right, even though that

light -- right is under legal challenge, which was timely filed.

Next slide.

15.2-2307 does talk about vested rights, and it has a three-part criteria. It talks about three things that a landowner has to do to be qualified. One, obtains or is the beneficiary of a significant governmental act -- act, which remains in effect, allowing development of a specific project. Two, relies on good faith on the significant governmental act. And three, incurs extensive obligations or significant expenses in diligent pursuit of that specific project.

Next slide.

So basically, you have three parts that the landowner needs to show in order to enjoy this statute: One, a significant governmental act -- affirmative governmental act, two, a reliance in good faith, or in three, incurs extensive obligations or substantial expenses.

Next slide.

Here, the response by the zoning administrator basically said, any actions taken by this landowner have been done with knowledge of the Circuit Court actions, and indeed, the landowner has entered a consent order to not pursue further development until the Circuit Court action is finalized, all of which militates against its good faith reliance on the above approvals. In other words, literally from the -- the moment that it received the SUP, Amazon knew that people were going to challenge it legally, challenge it under Title 15.2. They knew that, they knew that when they filed the site plan, they knew that when they incurred all the expenses after the rezoning. All of that was taken knowing that legal challenges had been filed, and those legal challenges were timely, and they have not yet been determined. So the zoning administrator ruled that there has not been good faith reliance. And as a result, that prong under 15.2-2307 is not met.

Next slide.

The zoning adminner (sic) also concluded it cannot rule affirmatively on the landowner's request until the Circuit Court actions referenced herein have been fully and definitively resolved, as the legality of the above approvals are wholly dependent on these determinations. Based upon that, the request for vested rights was denied and Amazon has filed an appeal.

Next slide, please.

One thing about significant affirmative governmental access, it also goes back the other direction. In other words, if the zoning administrator had approved the vested rights and said, no, Amazon, regardless of what happens in the Circuit Court, you have vested rights, that, in and of itself, would have been a governmental act. And not only would it have violated the injunction, but it also would've allowed Amazon to move forward with construction, basically because they could've relied on it.

And so in other words, it would've been, not just a shield, but also a sword that could've been used against the citizens that had sued to stop and -- and to have their day in court. So the bottom line is, Ms. Jenkins' decision is also a governmental act, just like the issuance of the SUP and the SDP. Therefore, her decision to not grant vested rights, but rather to let the litigation play out, was both logical and consistent with the statute.

Next slide.

All right. Just going back to 15.2-2307, determinations requested under that statute are significant governmental actions, in which a landowner can rely. They are presumed to be correct. Therefore, you have to be very careful in what you -- how you make these decisions. They carry the force of law in challenge -- unless challenged within 60 days. Here, Amazon has challenged the decision to the BZA.

Next slide.

Appeal process before the BZA. The -- the BZA has the following rules and duties: To hear and decide any orders, requirements, and decisions. The decision shall be based on the board's judgment of whether or not the administrative officer was correct. And here is a key part: The determination of the administrative officer shall be presumed to be correct. So again, where the administrative officer had knowledge of all relevant facts, she relied on those facts, she reached a logical determination, her determination can be presumed to be -- should -- has to be presumed to be correct.

Next slide.

Okay. Basically, this all comes down to the Circuit Court trial. The Circuit Court is going to hear all these issues on the past SUP, on the past zoning text amendment, everything that happened in the past, and that judge is going to make a decision. If the Circuit Court was to deem SUP-22-03 and SDP-23-6

as void ab initio, it basically would mean that Amazon does not have the legal right to build a data center at the property. That would moot this issue before the BZA. So in other words, we would be talking about nothing at that point. As a result, the Town is asking the BZA to deny the petition of Amazon and presume the zoning administration -- administrator's decision to be correct and just have the litigation be the final determinant on these issues. I will note, sort of parenthetically, there has been a discussion about potentially deferring this issue.

That's not something I feel comfortable asking for because the -- the law -- the law says that you all have to make a decision within 90 days. Of course, if Amazon would agree to defer for 60 days or 90 days and until we have a Circuit Court determination, then, of course, they can waive that right, like any other right. But that's something for the BZA to decide. I will say that the law presumes that the BZA will act within 90 days.

Next slide.

The Court order revisited.

Again, Ms. Jenkins, as a town official, asked the Town -- acts for the Town when making her determination under 15.2-2307. A significant governmental action, such as recognition of rights arising under SUP-22-03 and SDP-23-6 would have violated the Court's injunction order, because it says, Nor shall the Town approve, basically construction of a data center on the property. And -- and -- and the way that the consent order was -- was written was the -- the Town, which is a defendant in the case. Remember, the citizens of the plaintiffs of the Town, we are the co-defendants with Amazon. It would put us in a position of violating the consent order. So a determination of vested rights, in itself, would violate the injunction, and that was one of the reasons for the zoning administrator's order.

Next slide.

I want to talk a little bit about

Amazon's counterarguments. They've got very able council here, and I know he's -- he's pushed a lot of paper at you, and I've read it. I think what they want to do is focus on the ordinance that was passed last summer, which removed the data center use from the zoning ordinance and -- and to how that poses a risk to their substantial investments in the data center. Again, I would say, as a matter of law, that perspective change is not relevant to the cross litigation and -- and would not stop them. No one -- no one from the plaintiffs is arguing that that change to the law somehow prevents them from the current site plan that they have pending. They also talk about the -- the -- about-face creates uncertainty, which compelled Amazon to forego its immediate right to build in Warrenton. Well, they had already agreed, in January 2025, to not build. So they had entered a court order to not build until the litigation was decided. And again, you know, the -- the July 2025 text amendment, which happened months after that

agreed order, did not affect that and was consistent with that, that, again, everybody was going to stand down and let the Court determine who had the rights or whether there were rights to build.

Next slide, please.

Amazon has talked about their expenses, and -- and I will, you know, take in -- in good faith that they have submitted those expenses, sound models, soil sampling, tree felling, hiring of GCs, property security, and engineering contracts. Again, all of this was incurred with the knowledge of the cross litigation, which was timely filed -- properly filed under 15.2-2285. So again, there's no reliance, as required by Section 2307.

Next slide.

All right, conclusion. I'm on my last two minutes, so I'm -- I'm -- I'm getting into the final app. Again, the zoning administrator's decision is presumed correct, and it is indeed correct under the plain language of

Section 15.2-2307, because of the lack of a reliance and the -- and the fact that the significant governmental act was not relied upon. Two, the January 2025 order prohibits the parties, including the Town, from changing the status quo, or enabling the construction of the data center, or doing anything to approve that and -- and somehow bypass the Court process.

Amazon and the Town agreed to this order and are bound by it. Again, the July 2025 amendment to the zoning ordinance does not affect any rights currently being disputed in the cross action. It's not been raised as a defense. It's not -- it's not a legal argument. And again, it -- it was a prospective remedy only. And finally, an affirmative determination would create chaos and lead to more litigation at the cost of the taxpayer. So I have a minute and 12 seconds left. I am happy to answer any questions.

MS. CRIST: May I ask a question?

MS. MAYBACH: Sure.

MR. PETERSEN: Yes, sir.

MS. CRIST: Matthew Crist, Counsel for the BZA. Two brief questions. In 2309, it states that, The determination of the administrative officer shall be presumed correct.

I would assume that's a rebuttable presumption?

MR. PETERSEN: It is.

MS. CRIST: Can you give some examples of what would rebut that presumption?

MR. PETERSEN: Nothing.

MS. CRIST: But -- so is -- is --

MR. PETERSEN: I'm kidding. I'm kidding. All right. Tough audience. I -- I think you would have to show that it was incorrect, according to law. That either it -- there was some significant fact that was not taken into account or, you know, again, just -- either applied the incorrect law or applied the incorrect standard.

MS. CRIST: Okay. And you mentioned it is presumed -- or I -- I guess expected that the board operates within 90 days to respond to

the appeal. Is that 90 days mandatory or is there room for deferral in this --

MR. PETERSEN: There is room for deferral. And again, I didn't want to come before this body and disrespect your time by asking for a deferral. There is a case for the Virginia Supreme Court called Tran, which says that it's not mandatory, but rather is directory, so it's more of an aspirational. Having said that, in that Tran case, the parties had agreed to a deferral, so again, I would not want to unilaterally come up here and ask for a deferral without Amazon's permission. I do believe that's a -- an option, if Amazon would agree to it.

MS. CRIST: And would that be only on behalf of a party or is that something that could be sua sponte by the board?

MR. PETERSEN: Again, I -- I can't tell the board what to do. I -- I -- I -- again, I'll reiterate, the Supreme Court has said that the 90 days is directory, not a deadline, so I'll just leave it at that.

MS. CRIST: Okay. Thank you.
MR. PETERSEN: Yep.
MS. CRIST: Nothing further.
MS. SCULLIN: Can I -- can I ask a question? Given that Amazon agreed to the consent order, did they violate that by filing this appeal?
MR. PETERSEN: In my opinion, they did, yes. I -- I -- again, I can't speak to the motivations and -- and the people that represent Amazon or people that I -- I have great respect for, but I -- I do believe that this vested rights petition was a way to avoid the litigation.
MS. SCULLIN: Okay, thank you.
UNIDENTIFIED SPEAKER 1: Good job.
MR. PETERSEN: Yep.
MR. CORISH: Do you want to just get your bag now?
MR. PETERSEN: Yeah.
MR. CORISH: I'll give you your bag, in the middle of this.
MR. PETERSEN: All right.

MS. HEFLIN: Okay. We can --

MR. PETERSEN: I'll see you later. Thanks.

MS. HEFLIN: We can hear from the appellant side, they will also have 20 minutes, and that is Mr. Todd (inaudible).

MR. TODD: Thank you, Chair Maybach, members of the BZA, Mr. Petersen, and members of the audience. My name is Gordon Todd. I'm with the law firm of Sidley Austin, representing Amazon. I'd like to do three things in the course of my remarks here. I first want to address what is before the BZA this evening, and as importantly, what's not before the BZA this evening. Secondly, I want to very briefly touch upon the basis for Amazon's claims for vested rights. And then lastly, I will turn to the issues raised by able counsel for the Town. What Amazon -- what Amazon is here asking you to do is to make a determination whether Amazon has vested rights in connection with the property on Blackwell Road. And what does that mean? It

means that, based on past actions by the municipality and past actions in the reliance by Amazon, that a landowner is entitled to use a prior zoning classification or rely on prior determinations by zoning officials, not withstanding intervening changes.

Now, vested rights in Virginia are established by statute, which is not the case in most states. Before they are enacted, a landowner bore 100 percent of the risk that the zoning laws were changed or that a zoning official changed a determination. And that, frankly, created a significant disincentives to investment, because it takes a lot to gather the capital or make the commitment, particularly when you're dealing with a long-term, long-lead time, very expensive development. It creates a disincentive to -- to develop. And so the general assembly addressed this problem by creating statutory vested rights, replacing this sort of caveat emptor, if you will, system that went before, with one that allows landowners,

developers, and municipalities, to know exactly what laws will apply to that project for the life of the project. The circumstances before the board here this evening are -- are precisely the sort of circumstance in -- for which this was created.

As Mr. Petersen recounted, in 2021, the zoning code was changed to allow the construction of data centers in industrial zones, so long as you had a special use permit. And then in 2025, the Town Code was amended again to remove that use. In the intervening years, Amazon, working in good faith partnership with the Town, invested millions of dollars, incurred extensive legal obligations, and dedicated untold work hours towards the development of a data center on its property. And the Town, for its part, issued a special use permit and a site development plan, significant governmental actions. And so the question before the board today is simply: Based on those past actions, at some point in the past, did -- did Amazon's

rights to that zoning classification lock in? Now, I was interested to hear Mr. Petersen, this evening, say, no one questions that Amazon has the right to use the prior version of the zoning code.

Well, if that's right, we win. If that's right, you -- if that is correct, you should reverse the zoning administrator to determine that Amazon does have vested rights to use that zoning classification. That's what Mr. Petersen told you. What is -- what (indiscernible)? So let me turn now to what's not before the board, because this is just as important, and this has been very muddied in all the -- the submissions made to you. What's not before the board, and Mr. Petersen exist -- agreed with this, is the legality of the 2021 zoning tax amendment. That's simply not here for you, that's in the Circuit Court. But relatedly, what is also not here is the legality of the special use permit. That -- to the extent the special use permit is in firm on account of the

zoning being in firm, that will also be determined by the Circuit Court.

Nothing you do here today will affect either one of those. What do I mean by that? What -- what Amazon is seeking is a determination that -- which Mr. Petersen said we apparently already have. But a determination that we can use the prior version of the zoning code, allowing a data center, pursuant to a special use permit. If you agree that the zoning administrator was incorrect and Amazon is entitled to that zoning classification, Amazon still has to have a special use permit. That's separate from this -- this action. That's what's in the Circuit Court. We need both. When the zoning laws change, you -- you're deprived of that use, unless you have a reason that allows you to that -- to -- to -- to -- to use that prior classification. And that's why Amazon had to initiate this proceeding to secure its right to the prior zoning classification, which it could marry with the special use permit once the

litigation is resolved.

A special use permit -- or special -- sorry. A vested rights determination is not a permit, it's not a determination necessary to build or operate anything. It doesn't turn on the power, it doesn't let the water flow, it doesn't redirect traffic, it doesn't approve your architecture, it doesn't govern your setbacks. It does none of those things. It's neither necessary, nor sufficient to -- to -- to build a project or operate that project. It's certainly not permission to start construction. You would need a construction permit to do that. So when Mr. Petersen says that Amazon could rely on the zoning administrator's vested rights determination to start construction, that's absurd. The Town would object to that and we would lose that very quickly. It's not a construction permit. It is simply a recognition that, based on the Town's past actions and actions by the landowner and reliance on the Town's actions, you have the

right to use a prior version of the zoning code for a prior determination.

As Mr. Petersen reviewed, there are basically three requirements for vested rights. There are actually two statutes as issue here -- at issue here, this, 2307(A), which Mr. Petersen walked through. There's also 2311(C). The former deals with the zoning code -- changes to the zoning code. The latter deals with changes to official determinations within 60 days. But both establish the same requirements: a significant governmental action or a zoning official determination. That's one. Two is incurring expenses or changes to your legal obligations. And third is -- is -- is good faith. In our view, and I took it from Mr. Petersen's presentation, there's no question as to the first two. What Amazon did here exemplarily set forth in the declaration that we submitted. And so Amazon has -- what Amazon has done in reliance here and the fact that it benefited from zoning official determinations and

significant governmental action is not in question.

So I'm going to move past those two requirements and go straight to the heart of the issue, which is this question of good faith reliance. The zoning in the official -- the zoning administrator, as Mr. Petersen reviewed, concluded that Amazon couldn't have acted in good faith because Amazon knew about the litigation, and we need to see how the litigation resolves until we know whether Amazon had good faith. That's actually an estoppel argument. It's not a good faith argument. I want to come back to it and explain why it's wrong, but what I want to do first is talk to you about Virginia law and how Virginia law actually defines good faith, because this entity has a quasi-judicial body sitting here -- sitting here this evening, really as an instrument of the Circuit Court, not instruments for the Town, and you're charged with applying Virginia law. Good faith in this context means acting with honest motive and conversely acting

without intent to defraud.

The seminal decision on this issue is Board of Supervisors v. Bowman, which was handed down just last year, where the Court of Appeals defined good faith as when someone incurs a material change in position, in honest dependence on the legality of -- of the zoning action, and without the intent to defraud, deceive, or to obtain an unconscionable advantage. So it means you acted honestly. It means you acted without fraud. Virginia courts frequently rely on Black's Law Dictionary, and indeed, Bowman relied on Black -- black Law Dictionary to understand what good faith means more generally. And Black's defines good -- good faith as meaning, a state of mind consisting of honesty in belief or purpose or the absence of the intent to defraud or to seek unconscionable advantage. And this is a definition that repeats throughout Virginia law. And we put some of them in -- in the letter that we submitted to you last Friday, the Uniform Commercial Code, the law of

trusts, the law of sanctions, the Good Samaritan Law, even.

They all repeat this notion of acting without fraudulent intent, acting honestly. It's not about what someone else thinks, or does, or whether someone objects to what you're doing, thinks that you're wrong on the facts, or thinks that you're wrong on the law. It's what the actor thinks. It's subjective to the actor. If you acted in good faith, with honest intent, then you had good faith. That's what Virginia law defines good faith as meaning in this context and many others. And so applying that proper understanding, there's no question that Amazon here acted in good faith. The evidence shows, certainly, that Amazon wanted to develop a data center and still does. But Amazon has been quite honest and open about that. That's not a secret. Amazon purchased the land after it was rezoned -- or after the zoning code was changed, rather. It was already zoned industrial. But after the code

was changed to allow this use. Amazon purchased it -- purchased the land after that.

Amazon then worked with town officials to secure a special use permit that would allow the construction of a data center. Again, that wasn't a secret. Amazon did not begin physical development of the property until it had a special use permit in hand. Amazon participated in biweekly meetings with town staff to address questions and concerns staff had, and to address questions and concerns raised through staff by the public. In other words, the evidence showed that Amazon certainly want -- wanted to and still wants to develop a data center, but within the four corners of the law. Amazon, indeed, has even changed its plans to reflect public input, whether it's moving the power substation offsite, bearing the power cables, changing the building's facade, agreeing to acoustic testing in perpetuity for the life of this facility. All concerns raised by the public and all concerns that Amazon has addressed.

Conversely, there is not a scintilla -- a shred of evidence of Amazon acting in bad faith. You didn't hear any from Mr. Petersen, there is none in Ms. Jenkins' determination, there is none anywhere. Properly understood, there is simply no evidence that Amazon acted in bad faith. Now, let's turn to the arguments raised by -- by the Town and then the zoning administrator's decision. The principle argument, and you heard it here again today, is that Amazon couldn't have acted in good faith because of the -- the litigation. Well, as -- as an initial matter, that's contrary to the statute.

The statute defines exactly what is required for -- for rights to vest. And with respect to the legality or the -- the -- the extent nature of the significant government action being relied upon or the zoning official determination being relied upon, the statute requires only that a quote remain in effect -- or -- that -- that's with respect to a -- to a

zoning classification -- sorry, that's with respect to a significant governmental act or with respect to a zoning official determination. It has to have been in effect for 60 days.

It doesn't say, and is free from controversy, is not the subject of a lawsuit, is not the subject of threatened litigation, is something that people don't like, et cetera, et cetera. None of that is in the statute. Now, if you look at the Virginia Code, there are plenty of statutes that do impose those kind of limitations. In fact, there's a state provision that the -- the citizens cited to you, that when something is filed with the BZA, it stays the Town below from taking further action on the challenged -- on the challenge action in question. And that's an automatic stay. There is no such automatic stay in either of the statutes on which Amazon relies. The act relied upon simply has to remain in effect or have been in effect for 60 days.

None of the requirements that Mr.

Petersen pointed to exist in the statute. The fact is that landowners -- I mean, citizens generally rely on the actions -- rely on the actions of government, and that's logical and natural. In fact, Virginia law, like many states' laws, has in it what's called the presumption of regularity. It's a legal presumption that, absent evidence of the contrary, government officials have done their work properly, that their actions are lawful and properly enacted. And that's a very sensible presumption. It means that if you want to disagree with what the government did, you -- you bury the burden of proof of showing that government officials acted improperly. It puts a thumb on the scale in favor of those who are presumptively knowledgeable about the law. The vested right statutes follow very logically from that presumption because they recognize that landowners are necessarily going to rely on what officials do -- on what municipal officials do, and zoning officials.

Here, yes, there was a very contentious meeting in front of the town and counsel, which lasted until 2:30 in the morning. I'm sure it was quite the scene. That's democracy in action. Everyone got their say. It wasn't a secret what Amazon wanted to do. A bunch of folks from the town, and even more folks from outside the town, showed up and -- and had their say. And then democracy worked. There was a vote and the special use permit was issued. Of course Amazon gets to rely on that, after that amount of process. And then not withstanding that event and not withstanding the subsequent litigation, town officials continued to work with Amazon for a year to issue the site development plan. Certainly Amazon was aware of the -- of the litigation, but so was the Town, so were those officials. And nonetheless, they issued the site development plan.

Should Amazon -- or any landowner. I mean, whether it's someone building a -- a -- a data center or someone who wants to,

you know, put an addition on their house. Should they say, well, I got this thing from the Town, and they seem to know what they're doing, but -- but gosh, someone disagrees with it, so I guess I just can't rely on it. That's not how the law works. That's not how the law works. When you're working with the officials, they're presumptively knowledgeable, presumptively correct, and that's what the vested rights statute does.

The Town's argument here is also inconsistent with the notion of good faith. We're all familiar with good faith requirements, but -- but think about how they work. They only become relevant when the thing you relied on turns out to have been wrong. The law was not what you thought it was. The facts were not what you thought they were. So to say, well, we need to wait for the litigation to conclude to see whether Amazon was right or not, then we'll -- then we'll decide whether they acted in good faith. Well, if Amazon wins that litigation,

there's no need to inquire into good faith because we were right. Good faith requirements say, you know what? You got it wrong. You screwed up. Sorry, you did. The facts were wrong, the law was wrong. But you acted in good faith, and so the weight of the law will not come down on you. You get a pass.

They -- they are littered throughout the law. That's how they operate. And so to say, we have to wait for the substantive determination before we can decide whether you acted in good faith, turns that on its head. Good faith doesn't spring to life later. Good faith is a fact that existed in the past. Amazon's case here is built on actions taken in '23 and '24, long before this consent order, long before the change in the zoning code. Amazon either did or did not act with good faith back then. You don't wait until the resolution of litigation in, you know, the Virginia Supreme Court three years from now to decide whether Amazon acted in good faith back then. That's

simply not how good faith works. And as I reviewed, all the evidence indicates here that Amazon did act in good faith.

Now let me turn, at last, to the consent order. Amazon's conduct here does not violate the consent order, and no, this appeal also does not violate the consent order in our view. What the consent order did was, it preserved the status quo, brought down what I incurred. Nothing more. No more permits, no more approvals, no more development of -- no more furtherance of the construction, as of July -- or sorry, as of January 14, 2025. It affected nothing that went before. If Amazon's rights had already vested as a matter of law in 2023, that is the status quo, and it is contrary to the order and contract to the vested rights laws to refuse to acknowledge that. It preserved the status quo. And as you'll see, we don't rely on anything: any fact, any action taken after the date of the consent order, because there are no actions after the date of the consent order,

because Amazon has complied with the consent order.

A vested rights determination, as I said -- and I said this earlier, again, is not a permit. It's -- it's not a construction permit, it's not any other type of permit. It's not an approval. It's not specific to a particular project, in fact. It simply says, a landowner, based on their past actions in reliance on the municipality's past actions has a vested right to use a past version of the zoning code, or to rely on a past determination by a zoning administrator. It's entirely retrospective, whereas the -- the consent decree is entirely prospective. It says, no further permitter approvals, no further actions, further reconstruction. We've done none of those things. It's entirely retrospective.

The last point I'd make simply is, and this goes to the nature of the BZA, which I said this before, if Ms. Jenkins was correct and if Mr. Petersen was correct, that the consent

order prevents the Town from taking a particular action, which is not correct for the reasons I've covered, that does not apply to this entity. If this entity is not part of the town, it's not a town -- not a town organ, it's a quasi-judicial creature of the Circuit Court, not subject to that order. And so bound to apply Virginia law, this body can recognize that, based on its past actions and reliance on the Town's past actions, Amazon's rights have vested in the prior version of the zoning code and in the site development plan. And neither one of those recognitions will have any effect on the issues that are before the Circuit Court.

They're parallel proceedings. And the only reason this proceeding here is necessary is because the Town -- after the Court order was put in place, after Judge Fisher said, status quo preserved, nothing more. At that point, the Town amended its zoning code and took away the zoning that Amazon needed to develop this project. That's the only reason we're here.

I don't know if that violates the Court order, you could argue it either way, but that's the only reason we're here. They're parallel proceedings to separate proceedings, and I urge the BZA to proceed with this appeal. Thank you. We've got one minute for questions.

MS. CRIST: May I -- thank you. So you focused heavily on good faith. I -- I -- I think that we ought to presume absent evidence, otherwise, that you have acted in the -- that Amazon has acted in good faith. I -- when I reviewed these materials and your submissions, I focused moreso on an action of the -- of government official -- the -- the governmental act requirement. If, in the Circuit Court --

MS. HEFLIN: Excuse me.

MS. CRIST: I'm sorry?

MS. HEFLIN: I'm sorry. Could you identify yourself --

MS. CRIST: Yes.

MS. HEFLIN: -- just for the record?

MS. CRIST: Of course. Matthew Crist.

Matthew Crist, Counsel for the BZA, again. Sorry about that.

So the -- the -- the question that I have is: For the purposes of 2285, the -- the action that's brought in the Circuit Court, why does that not suspend the acts that Amazon is relying on? Let me just be very clear about that. Like, for an example, the SUP. Why is the SUP not suspended for the purposes of that appeal under 2285 by the citizens?

MR. TODD: I'm not sure I follow your question. I'm sorry.

MS. CRIST: So look -- in any case, you need a supersedeas bond -- you get a judgment of $10,000, you need a supersedeas bond to suspend it. But at that time, the judgment is suspended. You can't garnish that $10,000. Similarly, why is 2285 not read the same way, that if an appeal from a governmental act is taken, which the citizens did in the -- the case pending, the -- the -- each of the -- each of the governmental acts -- like I said, you -- you --

you -- you laid out that Amazon has acted in good faith on these governmental acts. But those governmental acts, we -- we cannot -- well, the BZA, I think, cannot view those acts as having taken place because the Court action may strike them out, and then there is no SUP and there -- there is no site development plan.

MR. TODD: I got you. I --

MS. CRIST: So --

MR. TODD: I got you. I got you.

MS. CRIST: Okay.

MR. TODD: Sorry, I -- I -- I wasn't sure which BZA action you were -- you were talking about. So we addressed that in our response, the -- the citizens letter, and I refer you to our response there. In -- in brief, the citizens would've had to have standing to -- to bring a proper appeal for -- for that suspension to even -- even take effect, and we don't even have standing. Secondly, this proceeding here challenges a -- a -- or seeks -- or is triggered by a subsequent action by the Town. Like I said,

the Town amended the zoning code in -- in -- in 2025. And once it does so, then Amazon seeks the vested rights determination, and then having knocked out that below, appeals it here. That's a -- it's an entirely separate proceeding.

MS. CRIST: I -- I definitely understand the separate proceedings. My -- my point, though, is -- is, the -- the board -- it seems to me, the board should start from the perspective that the governmental acts that you're relying on are suspended while the appeal is pending, because then if they are suspended --

MR. TODD: Well --

MS. CRIST: -- if -- if they're not -- let me -- let me just say one brief thing. If 2285 is not read to say that, while there's an appeal pending, they are not suspended, then 2285 has no effect.

MR. TODD: Well, the --

MS. CRIST: We can't (crosstalk)

MR. TODD: Well, the suspension -- I -- I -- as I read it, the -- the suspension

prevents the zoning officials from taking further action on a -- on any of the challenge actions. It freezes them while the BZA considers them. The BZA here is not being asked to consider the legality of the SUP or the -- or the site plan, which is really the more relevant one there, or -- or any other decision of zoning -- of -- of zoning official. They're not being asked to -- to -- to question -- or -- sorry. But the board members are not being asked to look into the legality of any of those. Those are -- the existence of those actions is simply a fact. Legal or not, the question is whether -- is -- was one in effect and was it -- or did one exist for 60 days? That's a historical fact that feeds into the vested rights determination. Whether it was lawful or not is for the Circuit Court to decide.

MS. CRIST: Okay.

MR. TODD: That's not relevant for this proceeding.

MS. CRIST: And -- and -- and I know

if you get two lawyers talking, we can go for a long time, so cut me off at any time.

I do have one more question, if I may.

MS. MAYBACH: Okay. We just wanted to make sure we didn't need to go with the matters that were being discussed if --

MS. CRIST: I think the timing determination is entirely your issues, and so the --

MS. HEFLIN: The Town does have the opportunity for a rebuttal --

MS. MAYBACH: Okay. Fantastic.

MS. HEFLIN: -- so we can continue with questions or we could do the rebuttal and then continue the questions afterwards. That's up to you, as the chair.

MS. MAYBACH: Okay. Continue with questions is -- is --

MS. CRIST: No, please -- please proceed. Yeah, yeah.

MS. MAYBACH: Oh, you're fine. You

continue on.

MS. CRIST: Okay.

Because I -- because I do just have one more point. I -- I -- I am concerned about whether the governmental acts that you're relying on are suspended under 2285, but let's set that aside for the moment. I -- because I think this is a -- a fundamental problem that I'm not understanding conceptually. The consent order -- well, let -- let me frame it another way. Your request and -- and this appeal, it seems to me that they either progress the process towards building the data center or you're asking for an advisory opinion. And I don't understand because -- because you're saying that you didn't violate the consent order. So what -- what -- what are you doing, I -- I guess is the point here?

MR. TODD: It's interesting. I mean, the -- the vested rights determination, in a sense, is in the nature of an advisory opinion, but it's one that's authorized by statute.

MS. CRIST: I understand. It is authorized. Yes.

MR. TODD: It -- it -- it says -- it says -- you -- you -- you know, you -- we -- it's a public recognition that you have an entitlement to a subsequently amended zoning classification and -- and -- and the pre-amended version. And what it does is, it removes uncertainty. You -- if you have -- you have a legal right to that, whether or not you get a vested rights determination, right? You don't need to get a vested rights determination in order to build something, right? But it's a nice thing to have because it proves the uncertainty. It means you're progressing not at risk, instead of at risk. So -- so it's helpful to have, but in a sense, it is a vested rights determination -- or sorry, in a sense --

MS. CRIST: An -- an advisory.

MR. TODD: -- it is an advisory opinion. Right, but -- but a -- but a proper one. Does that answer your question?

MS. CRIST: Yes it does, but it -- it -- it seems like you are trying to have both, progressing the process towards a data center under the --

MR. TODD: That's right.

MS. CRIST: -- (crosstalk)

MR. TODD: You asked about -- right, the --

MS. CRIST: Yeah.

MR. TODD: -- the -- the consent order. So the consent order says, no further permits or approvals, okay, with respect to the data center. A vested rights determination is not project specific. It doesn't approve, as I said, power, water, traffic, any of those things. It doesn't -- it's not required and it doesn't approve anything with respect to the data center. And then the other part is, otherwise further construction of the data center. A vested rights determination doesn't move dirt. It doesn't put posts in the ground, build foundations. It doesn't progress to construction. It simply

gives you a legal entitlement to do something if you go choose, and if you're otherwise allowed to. Now, we're not allowed to right now because of the consent decree, which we consented to, and we wouldn't be allowed to until we get a whole raft of additional permits.

There's a lot of process you have to go, right? Starting with that construction permit, which we don't have, at least to the best of my knowledge. There's a lot more in the actual zoning and construction approval process, right, to work itself out. This doesn't affect any of this.

MS. CRIST: So -- so I -- I understand that it is not a -- a -- a -- a building permit. It doesn't move dirt. I understand that. But you're saying that it's -- it's -- there is an uncertainty as to whether you have vested rights -- well, in your mind, there isn't. But -- but there is because of what the Town did. And so without the vested rights determination or with a denial -- so an affirmance today, you would not

be able to progress, correct?

MR. TODD: No.

MS. CRIST: No.

MR. TODD: No. Well, without -- well, first of all, Mr. Petersen said that we're entitled to use the prior version of the -- of the zoning code, so I would imagine that -- that he'll be quoted at some point, somewhere. You can progress, you just progress at risk. And then the question of whether you're within the zoning code just -- will be raised at some point down the road in some other form. What a vested rights determination does is, it removes that risk. It gives clarity at the outset.

MS. CRIST: Okay.

MR. TODD: Thank you.

MS. CRIST: No further questions. Thank you.

MS. MAYBACH: Thank you very much.

Mr. Petersen?

MR. PETERSEN: Thank you.

All right. I'm about 40 IQ

points below what just went on, so I -- I want to bring it back down to kind of common sense. If you look back at the petition that was made on July 25th, 2025, it's on behalf of Amazon, it says, We respectfully submit the letter requesting determination of vested rights for the data center development project located on Blackwell Road, and it references the 2022 SUP and the 2023 site plan, and it talks about, it has advanced significantly -- the project has advanced, and they want to have -- they've incurred $3.5 million in -- in costs, and they want to have all of that recognized as a vested right. They don't, one time in that letter, mention the 2025 zoning text amendment, not once. All they want is a determination by the Town that they have a vested right in the special use permit and the site plan that are under legal challenge.

That's exactly what they asked for. That's what was given to the zoning administrator and she said, no, those are under

legal challenge. So whether, as the attorney said, these actions have been suspended as a significant governmental act, because they're under legal challenge, or whether you say, well, you can't rely on them in good faith because they're not final yet. They haven't been approved by the Court. It gets you to the same place. They don't have vested rights because what they asked to have vested is under a legal challenge, period, full stop. That was the letter that the zoning administrator responded to. That was the logic that she used. Nobody in thousands of words, and -- and higher degrees, and everything else, has challenged that or said in any way, that was illogical. It's not illogical. Now, let me address a few more points. My -- my colleague talked about good faith reliance, and he said -- you know, we wear suits, we go to law school, we try and act very professional and, you know, courteous to each other.

I -- I get it, okay? And I have

great respect for people, and believe me, if I had Amazon as a client, I'd be pretty excited too, okay? But here is the bottom line. Forget about good faith. Look at the word reliance. Reliance means you rely on something, okay? You buy a piece of property, you buy a car, you get married. You take actions that are pretty concrete actions, and you make life decisions based on that, and you rely on that. You get a rezoning, a lawsuit is filed within 30 days, thousands of words are filed at the Circuit Court, the lawsuit is under litigation, you enter a consent decree, you know you're going to trial in March. Are you relying on that? No, of course not. You're not relying on that. You know it's going to be legally challenged. You know you're going to court. Now, I have to -- ironically, the -- the point was made by my colleague that, somehow, the plaintiffs or the challengers didn't have standing.

Well, actually the Court has already determined they have standing. They do

have standing, so that's not an issue. The issue really is -- is Amazon filed this petition. They didn't mention the 2025 repeal. They wanted to have vested rights determined for the very same approvals that are under legal challenge. They could've waited until the litigation was resolved and filed the same petition asking for vested rights based on the 2025 repeal. They didn't wait. They could defer the determination today. I mean, I pretty much invited that. They could have -- you know, they entered a consort -- a consent order that said no further approvals. The bottom line is, Amazon filed this petition in order to have a vested rights determination as an insurance policy, that if they lose at court, they have this and they can go ahead and build the data center, even if they lose at court.

And again, I -- I don't blame them. I mean, they have a right under Virginia law to use all these legal options. But the bottom line is, Ms. Jenkins made a very logical decision in saying, no, you -- these are

challenged governmental decisions. They've been legally challenged. They're going to be determined in court. Therefore, you did not show reliance under 15.2-2307.

And that's really all I have. Thank you.

MS. MAYBACH: No more rebuttals?

MS. HEFLIN: No. The only rebuttal would be permitted if new issues were presented.

MS. MAYBACH: Okay.

MR. MULLISS: All right. I move that the Board of Zoning Appeals convene in closed session to discuss the following, as permitted by Virginia Code titled 2.2 dash -- sorry, Section 3711A7, Consultation with legal counsel or briefing by staff members or consultants pertaining to the pending case of BZA-25-3, where such consultation or briefing and open meeting would adversely affect the negotiation or litigation posture of the town.

MS. HEFLIN: (Indiscernible)

MS. MAYBACH: We are going to take a

roll call vote as we go in, and I'm going to start over here with Charlie Mulliss.

MR. MULLISS: Aye.

MS. MAYBACH: Ms. Helander?

MS. HELANDER: Aye.

MS. MAYBACH: And Ms. Elizabeth Scullin?

MS. SCULLIN: Yes. Aye.

MS. MAYBACH: All right. And I also concur, so we are going to head into closed session.

(A recess was taken.)

MS. HELANDER: I note that the board certify that, in the closed session just concluded, nothing was discussed except the matter or matters. I specifically identify that the Motion to Convent in Closed Session, and lawfully permitted to be discussed in a closed session under the provisions of the Virginia Freedom of Information act, as cited in that motion.

MR. MULLISS: Seconded.

MS. MAYBACH: We are going to do a roll-call vote.

Ms. Elizabeth Scullin?

MS. SCULLIN: Aye.

MS. MAYBACH: And Ms. Helander?

MS. HELANDER: Aye.

MS. MAYBACH: And Mr. Mulliss?

MR. MULLISS: Aye.

MS. MAYBACH: And I, myself, also conclude our closed session and we will continue on with our meeting.

We're going to hear from our legal representation, Mr. Crist.

MS. CRIST: Madam Chair, Matthew Crist for -- attorney for the BZA. I wanted to provide my recommendation and a brief summary of the reasons for it. Shortly stated -- briefly stated, I believe the appropriate action for the board is to defer consideration of this appeal and -- and -- and defer that action on it until after the CL128 -- I'm sorry, CL23-128 case pending in the Circuit Court is concluded and all

appeals periods are expired. And again, I'll try to be brief, but the three bases for this recommendation are, first, the consent order entered January 14th, 2025, in the matter. It stays -- it -- it is an injunction staying further approvals related to the construction of the data center, and that's binding on the litigants. However, I believe the board -- and I recommend that the board construe it as broadly and conservatively as possible. If the board either affirms or overturns the determination of Ms. -- Ms. Jenkins, the board would be assisting either the Town or Amazon in furthering permits or approvals related to the construction of the data center on the property, and that action is specifically prohibited by the Court.

Amazon has provided its opposition to this, but I believe that that is the -- the -- the -- the most important point for this board is to construct that consent order in that broad sense. Second, while there is the action pending under 2285, as I discussed with

Counsel today, it is my recommendation to the board that the actions, both the SUP and the site plan -- both of those governmental acts are suspended under 15.2-2285. And therefore, for the purposes of this board reviewing the determination, the board should wait until after the resolution of the action because the Court will enter an opinion in an order explaining what's left after the action is done. And therefore, I recommend that the board defer taking an action either way on this appeal until after that action is completed and all appeals periods have expired.

MS. MAYBACH: Thank you, Mr. Crist.

Does anybody have any questions?

MS. SCULLIN: No.

MR. MULLISS: All right. Well, then in accordance with the board's rules, I move to defer action until -- sorry, defer until after pending action of CL23-128 is concluded and all appeals periods have expired.

MS. HELANDER: I'll second the motion.

MS. MAYBACH: All in favor?
MS. HELANDER: Aye.
MR. MULLISS: Aye.
MS. SCULLIN: Aye.
MS. MAYBACH: And the motion carries four to zero for the count.
Thank you.
And our next order of business is the adoption --
MS. HEFLIN: Ms. Maybach?
MS. MAYBACH: Hm?
MS. HEFLIN: Apologies for interrupting.
MS. MAYBACH: No.
MS. HEFLIN: To be completely clear, that is four of you for the deferral, one of you abstain?
MS. MAYBACH: Sorry, yes. Four for the deferral and one for the abstained.
MS. HEFLIN: Okay.
MS. MAYBACH: And our next order of business, when Mr. Baggett comes back, is our

schedule adoption.

MR. TODD: Madam Chair, are -- are we excused?

MS. MAYBACH: I believe you are excused. Yes. Thank you all for coming.

(A recess was taken.)

MS. HEFLIN: There was a citizen comment that was submitted by Mr. Michael Brady. He is counsel for CFFC. That will be included as part of the minutes and the official record for the meeting.

(Off the record at 6:17 p.m.)

CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

I, Lee Utterback-Pair, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings were fully sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

Notary Registration No.: 7796769

My Commission Expires: 08/31/2026



LEE UTTERBACK-PAIR, NOTARY PUBLIC,
FOR THE COMMONWEALTH OF VIRGINIA
February 10, 2026

CERTIFICATE OF TRANSCRIBER

I, Marti Schreiber, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding; that said proceedings were reduced to typewriting under my supervision; that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; and that I am neither counsel for, related to, nor employed by any of the parties to the case and have no interest, financial or otherwise, in its outcome.



_____

MARTI SCHREIBER

PLANET DEPOS, LLC

February 10, 2026

A
a7
66:15
ab
11:16, 12:16, 23:1
abigail
4:12
ability
73:11, 74:8
able
25:1, 31:18, 61:1
about
10:11, 12:1, 16:8, 18:4, 18:6, 20:12, 23:5, 23:12, 24:22, 25:15, 26:7, 38:9, 38:15, 40:5, 40:19, 44:17, 46:14, 52:2, 52:7, 53:14, 57:5, 59:7, 61:22, 62:9, 63:17, 64:4
about-face
25:15
above
19:9, 20:7
absence
39:17
absent
44:8, 51:9
absolutely
8:3
abstain
71:17
abstained
71:19
absurd
36:17
access
20:13
accordance
70:18
according
7:5, 28:15
account
28:17, 34:22
accurate
73:10, 74:7
acknowledge
48:18
acoustic
41:20
acres
9:3
across
9:4, 11:7
act
13:21, 18:8, 18:9, 18:12, 18:19, 20:19, 21:6, 23:22, 27:3, 43:2, 43:19, 47:18, 48:3, 51:15, 52:19, 63:3, 63:19, 67:20
acted
38:8, 39:10, 39:11, 40:10, 40:15, 42:7, 42:11, 44:15, 46:21, 47:5, 47:12, 47:22, 51:10, 51:11, 53:1
acting
14:1, 38:22, 40:4, 42:2
action
13:22, 14:2, 14:4, 17:6, 19:8, 24:6, 27:13, 35:14, 37:12, 38:1, 39:8, 42:19, 43:15, 43:16, 45:5, 48:20, 50:2, 51:13, 52:5, 53:5, 53:13, 53:22, 55:2, 68:18, 68:20, 69:15, 69:22, 70:7, 70:9, 70:11, 70:12, 70:19, 70:20
actions
11:14, 11:16, 19:3, 19:5, 20:5, 21:14, 32:1, 32:2, 33:20, 33:21, 36:21, 36:22, 44:3, 44:4, 44:10, 47:15, 48:22, 49:9, 49:10, 49:16, 50:9, 55:2, 55:12, 63:2, 64:7, 64:8, 70:2
actor
40:9, 40:10
acts
24:4, 52:6, 52:22, 53:2, 53:3, 53:4, 54:10, 57:5, 70:3
actual
60:11
actually
14:3, 16:4, 37:5, 38:12, 38:16, 64:21
addition
46:1
additional
60:6
address
31:13, 41:10, 41:11, 63:16
addressed
32:19, 41:22, 53:14
administration
23:8
administrative
22:6, 22:8, 22:9, 28:4
administrator
6:8, 17:13, 19:3, 19:20, 20:15, 34:8, 35:11, 38:7, 49:13, 62:22, 63:11
administrator's
8:18, 23:8, 24:20, 26:21, 36:16, 42:9
adminner
20:2
adoption
71:9, 72:1
advanced
62:10, 62:11
advantage
39:10, 39:19
adversely
66:19
advisory
57:14, 57:21, 58:19, 58:20
affect
16:10, 26:1, 27:12, 35:4, 60:12, 66:19
affected
48:13
affirmance
60:22
affirmative
17:16, 18:19, 20:13, 27:16
affirmatively
20:3
affirms
69:11
after
10:15, 13:4, 14:10, 19:16, 25:22, 40:20, 40:21, 40:22, 41:2, 45:11, 48:20, 48:22, 50:17, 50:18,

68:21, 70:6, 70:9, 70:12, 70:19
afterwards 56:16
again 10:11, 15:13, 17:2, 17:7, 17:17, 22:9, 24:3, 25:8, 25:21, 26:2, 26:12, 26:15, 26:20, 27:10, 27:15, 28:17, 29:4, 29:11, 29:18, 29:19, 30:9, 33:11, 41:6, 42:10, 49:4, 52:1, 65:18, 69:1
against 19:9, 21:3
agenda 9:20
aggrieved 11:9, 12:5
ago 12:1
agree 23:16, 29:14, 35:10
agreed 14:14, 14:16, 14:18, 15:11, 25:18, 26:1, 27:9, 29:10, 30:5, 34:17
agreeing 41:19
agreement 3:13
ahead 8:8, 13:7, 65:16
al 5:2
all 7:13, 7:14, 7:21, 7:22, 10:11, 10:12, 14:1, 14:22, 15:14, 16:6, 16:11, 19:8, 19:15, 19:16, 21:12, 22:10, 22:16, 22:18, 23:15, 26:12, 26:18, 28:13, 30:22, 34:14, 40:3, 41:21, 41:22, 46:13, 48:2, 61:5, 61:22, 62:13, 62:16, 65:20, 66:5, 66:11, 67:9, 68:22, 70:12, 70:17, 70:20, 71:1, 72:5
allow 9:18, 33:8, 41:1, 41:5
allowed 12:14, 20:21, 60:2, 60:3, 60:5
allowing 12:15, 18:9, 35:9
allows 32:22, 35:17
already 16:11, 17:5, 17:8, 25:18, 35:7, 40:22, 48:15, 64:22
also 6:2, 20:2, 20:13, 20:20, 21:2, 21:5, 25:14, 31:5, 34:20, 35:1, 37:7, 46:11, 48:7, 67:9, 68:9
amazon 1:11, 4:10, 8:5, 8:17, 10:6, 10:8, 12:20, 13:2, 15:1, 15:6, 17:12, 19:11, 20:9, 20:16, 20:21, 21:20, 23:2, 23:7, 23:16, 24:15, 25:16, 26:7, 27:9, 29:14, 30:5, 30:11, 31:11, 31:19, 31:20, 32:3, 33:13, 34:3, 34:9, 35:5, 35:11, 35:12, 35:19, 36:15, 37:18, 37:20, 38:8, 38:9, 38:11, 40:15, 40:17, 40:18, 40:19, 41:1, 41:3, 41:6, 41:8, 41:13, 41:16, 41:22, 42:2, 42:7, 42:11, 43:19, 45:6, 45:11, 45:15, 45:16, 45:20, 46:20, 46:22, 47:18, 47:22, 48:3, 49:1, 50:21, 51:11, 52:6, 53:1, 54:2, 62:4, 64:2, 65:2, 65:13, 69:13, 69:17
amazon's 13:9, 25:1, 29:13, 31:16, 33:22, 47:15, 48:5, 48:14, 50:10
amber 6:9
amend 15:21
amended 9:17, 10:4, 11:13, 33:11, 50:20, 54:1, 58:6
amendment 11:15, 12:14, 14:20, 16:2, 22:19, 25:22, 27:11, 34:18, 62:15
amount 45:12
another 57:10
answer 12:11, 27:19, 58:22
any 19:3, 22:3, 23:19, 27:12, 27:19, 42:3, 45:20, 48:20, 49:6, 50:13, 52:13, 55:2, 55:7, 55:11, 56:2, 59:15, 60:13, 63:15, 70:15, 73:4, 73:13, 74:9
anybody 70:15
anything 27:7, 36:5, 48:20, 59:17
anywhere 42:5
apologies 71:12
app 26:20
apparently 35:7
appeal 7:4, 8:5, 8:17, 10:20, 13:16, 13:18, 20:10, 22:1, 29:1,

30:7, 48:6, 51:5, 52:9, 52:19, 53:18, 54:11, 54:17, 57:11, 68:19, 70:11
appealed 10:22, 11:1
appeals 5:10, 39:5, 54:4, 66:12, 69:1, 70:12, 70:21
appellant 31:5
applicable 9:12, 17:11
application 7:4, 10:9, 13:9
applied 16:21, 28:18
apply 17:8, 33:2, 50:3, 50:7
applying 38:20, 40:14
appropriate 68:18
approval 10:19, 49:7, 60:11
approvals 15:3, 19:10, 20:7, 48:11, 49:16, 59:12, 65:5, 65:12, 69:6, 69:14
approve 15:2, 24:9, 27:7, 36:8, 59:14, 59:17
approved 10:16, 13:9, 20:15, 63:7
approximately 7:9, 7:11, 9:3, 10:5, 11:20
april 13:8, 13:14
architecture 36:8
areas 16:1
argue 51:2
arguing 25:12
argument 27:14, 38:12, 38:13, 42:10, 46:11
arguments 42:8
arising 24:7
aside 57:7
asked 16:8, 17:21, 24:3, 55:4, 55:8, 55:10, 59:7, 62:20, 63:9
asking 23:6, 23:14, 29:6, 31:19, 57:13, 65:7
aspirational 29:9
assembly 32:19
assisting 69:12
associate 7:15
associates 4:5
assume 28:5
attorney 7:7, 15:16, 16:7, 63:1, 68:15
audience 28:13, 31:9
audio 73:9, 74:4
august 9:16
austin 4:13, 31:10
authorized 57:22, 58:2
automatic 43:17, 43:18
avoid 30:13
aware 45:16
away 15:19, 17:4, 50:21
aye 67:3, 67:5, 67:8, 68:4, 68:6, 68:8, 71:2, 71:3, 71:4

B

back 12:20, 14:1, 16:5, 16:6, 20:14, 21:12, 38:13, 47:19, 47:22, 62:2, 62:3, 71:22
background 9:1, 9:2, 9:10
backwards 12:21
bad 42:3, 42:7
bag 30:18, 30:20
baggett 6:4, 71:22
based 20:8, 22:5, 32:1, 33:21, 36:20, 49:9, 50:8, 64:9, 65:8
bases 69:2
basically 9:4, 10:3, 14:18, 15:10, 15:18, 18:16, 19:3, 20:22, 22:16, 23:1, 24:10, 37:4
basis 31:16
bearing 41:18
because 14:5, 16:11, 17:20, 20:22, 23:14, 24:9, 27:1, 32:14, 34:13, 38:9, 38:16, 42:12, 44:19, 47:2, 48:21, 49:1, 50:17, 53:5, 54:12, 57:3, 57:7, 57:15, 58:14, 60:3, 60:20, 63:3, 63:5, 63:8, 70:7
become 46:15
been 9:7, 9:21, 10:4, 12:4, 12:7, 12:8, 13:5, 13:6, 14:20, 15:8, 15:12, 19:4, 19:17, 19:19, 19:21, 20:5, 20:18, 21:1, 21:2, 23:11, 27:13, 34:14, 40:18, 43:4, 43:20, 46:16, 63:2, 63:6, 66:1
before 3:13, 12:6, 22:1, 23:4, 29:5, 31:13, 31:14, 32:9, 32:22, 33:3, 33:20, 34:13,

34:16, 47:11, 47:16, 47:17, 48:14, 49:21, 50:13, 73:3
begin 7:22, 41:7
behalf 4:2, 4:10, 5:2, 5:10, 29:16, 62:4
being 8:3, 16:15, 17:21, 27:12, 35:1, 42:19, 42:20, 55:4, 55:8, 55:10, 56:7
belief 39:17
believe 11:21, 13:14, 29:13, 30:12, 64:1, 68:18, 69:8, 69:18, 72:4
below 43:15, 54:4, 62:1
beneficiary 18:8
benefited 37:22
best 60:9, 73:10, 74:7
better 10:14, 12:12
binding 69:7
bit 15:17, 24:22
biweekly 41:9
black 39:13
black's 39:12, 39:15
blackwell 8:21, 9:3, 31:22, 62:8
blame 65:18
board 5:10, 6:5, 6:6, 6:7, 28:22, 29:17, 29:19, 33:4, 33:20, 34:13, 34:16, 39:3, 54:8, 54:9, 55:9, 66:12, 67:13, 68:19, 69:8, 69:9, 69:10, 69:12, 69:20, 70:2, 70:5, 70:6, 70:10
board's 22:5, 70:18
body 29:5, 38:17, 50:8
bond 52:14, 52:15
bore 32:10
both 14:3, 21:9, 35:15, 37:11, 59:2, 70:2, 70:3
bottom 14:2, 14:17, 16:14, 21:5, 64:3, 65:13, 65:21
bound 27:10, 50:7
bowman 39:3, 39:13
brady 5:3, 72:8
bridge 4:6
brief 28:2, 53:16, 54:15, 68:16, 69:2
briefing 66:16, 66:18
briefly 31:15, 68:17
bring 53:18, 62:2
broad 69:21
broadly 69:9
brought 48:9, 52:5
build 10:9, 23:2, 25:17, 25:19, 25:20, 26:5, 36:5, 36:11, 58:12, 59:21, 65:16
building 15:6, 45:21, 57:13, 60:15
building's 41:19
built 47:15
bunch 45:7
burden 44:14
bury 44:14
business 11:12, 71:8, 71:22
buy 64:6
bypass 17:21, 27:8
bz 13:21
bza 7:3, 8:5, 13:16, 13:21, 14:1, 21:21, 22:1, 22:2, 23:4, 23:6, 23:20, 23:21, 28:2, 31:8, 31:13, 31:14, 43:14, 49:20, 51:5, 52:1, 53:4, 53:13, 55:3, 55:4, 68:15
bza--3 66:17

C

c 37:7
cables 41:19
call 67:1
called 13:20, 29:7, 44:6
can't 29:18, 30:9, 46:5, 52:17, 54:20, 63:5
cannot 20:3, 53:3, 53:4
capital 32:15
car 64:6
careful 21:17
carries 71:5
carry 21:18
cary 5:6
case 1:8, 11:4, 13:16, 14:11, 24:13, 29:6, 29:10, 32:8, 47:15, 52:13, 52:20, 66:17, 68:21, 73:13, 74:10
caveat 32:21

center
5:5, 10:10, 13:3, 13:10, 15:4, 15:7, 16:15, 23:3, 24:10, 25:6, 25:8, 27:7, 33:17, 35:9, 40:17, 41:5, 41:15, 45:22, 57:13, 59:3, 59:13, 59:17, 59:19, 62:7, 65:17, 69:7, 69:15
centers
9:18, 12:15, 15:20, 15:22, 33:9
certain
12:7, 12:8
certainly
36:12, 40:16, 41:13, 45:16
certificate
73:1, 74:1
certify
67:14, 73:4, 74:2
cetera
43:8, 43:9
cffc
72:9
chain
4:6
chair
6:3, 6:4, 31:7, 56:17, 68:14, 72:2
challenge
11:10, 16:12, 18:1, 19:12, 19:13, 21:19, 43:16, 55:2, 62:19, 63:1, 63:4, 63:10, 65:5
challenged
16:15, 21:19, 21:20, 43:16, 63:14, 64:16, 66:1, 66:2
challengers
64:20
challenges
11:13, 19:17, 19:18, 53:21
chance
16:6
change
9:15, 16:12, 25:9, 25:12, 35:16, 39:6, 47:17
changed
16:9, 32:11, 32:12, 33:8, 40:21, 41:1, 41:16
changes
32:6, 37:8, 37:10, 37:14
changing
27:5, 41:19
chaos
27:17
chap
4:5, 7:8, 7:10
chapman
4:3
charged
38:20
charles
1:5, 5:2, 11:4
charlie
6:5, 67:2
choose
60:2
church
5:12
circuit
1:2, 10:2, 11:1, 11:4, 11:7, 11:21, 14:4, 14:20, 15:12, 19:5, 19:7, 20:4, 20:17, 22:17, 22:22, 23:18, 34:19, 35:2, 35:15, 38:19, 50:6, 50:14, 51:15, 52:5, 55:17, 64:11, 68:22
circumstance
33:5
circumstances
33:3
cited
43:13, 67:20
citing
13:16
citizen
72:7
citizens
10:12, 11:10, 12:5, 13:14, 13:19, 21:3, 24:14, 43:13, 44:2, 52:10, 52:20, 53:15, 53:17
cl
1:9, 11:6, 68:21, 70:20
claims
31:16
clarity
61:14
classification
32:4, 34:1, 34:10, 35:12, 35:19, 35:21, 43:1, 58:6
clear
52:7, 71:15
clearly
16:8
client
64:2
closed
66:12, 67:10, 67:14, 67:17, 67:18, 68:10
co-defendants
24:15
code
8:7, 8:16, 11:9, 17:15, 33:8, 33:11, 34:5, 35:9, 37:1, 37:8, 37:9, 39:22, 40:21, 40:22, 43:10, 47:17, 49:12, 50:11, 50:20, 54:1, 61:7, 61:11, 66:14
coextensive
13:15
colleague
63:17, 64:19
come
29:4, 29:12, 38:13, 47:6
comes
22:16, 71:22
comfortable
23:14
coming
72:5
comment
72:8
commercial
39:22
commission
73:17
commitment
32:15
common
62:2
commonwealth
3:15, 73:21
compelled
25:16
complaint
11:13
completed
70:12
completely
71:15

complied
49:1
conceded
12:4
conceptually
57:9
concerned
57:4
concerns
41:10, 41:11, 41:21, 41:22
conclude
7:12, 46:19, 68:10
concluded
20:3, 38:8, 67:15, 68:22, 70:20
conclusion
26:18
concrete
64:8
concur
67:10
conduct
48:5
connection
31:21
consent
9:20, 19:6, 24:12, 24:17, 30:6, 47:16, 48:5, 48:6, 48:7, 48:8, 48:21, 48:22, 49:1, 49:14, 49:22, 57:9, 57:16, 59:10, 59:11, 60:4, 64:13, 65:12, 69:3, 69:20
consented
60:4
conservatively
69:10
consider
55:4
consideration
68:19
considers
55:3
consistent
21:10, 26:2
consisting
39:16
consort
65:11
construct
69:20
construction
13:2, 15:4, 15:7, 20:21, 24:10, 27:6, 33:9, 36:13, 36:17, 36:19, 41:5, 48:12, 49:5, 59:19, 59:22, 60:8, 60:11, 69:6, 69:14
construe
69:9
consultants
66:16
consultation
66:15, 66:18
contentious
45:2
contested
12:10, 12:13
context
9:9, 38:21, 40:13
continue
56:14, 56:16, 56:18, 57:1, 68:10
continued
2:1, 5:1, 6:1, 45:14
contract
48:17
contracts
17:2, 26:12
contrary
17:18, 42:13, 44:9, 48:16
controversy
43:6
convene
66:12
convent
67:17
conversely
38:22, 42:1
copy
14:15
corish
4:4, 7:15, 7:17, 7:19, 8:10, 8:13, 12:22, 30:17, 30:20
corners
41:15
correct
21:16, 22:6, 22:9, 22:14, 23:9, 26:21, 26:22, 28:4, 34:7, 46:9, 49:21, 49:22, 50:2, 61:1
corrupts
8:2, 8:3
cost
27:18
costs
62:12
could
10:11, 12:16, 29:16, 35:22, 36:15, 51:2, 51:18, 56:15, 65:9, 65:10
could've
20:22, 21:2, 65:6
couldn't
38:8, 42:11
council
1:9, 9:16, 10:16, 15:14, 15:16, 15:20, 25:2
council's
11:14
counsel
12:10, 28:1, 31:18, 45:3, 52:1, 66:15, 70:1, 72:9, 73:12, 74:9
count
71:6
counterarguments
25:1
county
1:2, 11:4, 11:21
course
23:16, 23:18, 31:12, 45:11, 51:22, 64:15
court
1:2, 10:2, 11:1, 11:4, 11:7, 11:21, 12:6, 12:9, 13:6, 14:4, 14:20, 15:1, 15:13, 19:5, 19:8, 20:4, 20:17, 21:4, 22:17, 22:18, 22:22, 23:18, 24:2, 25:19, 26:3, 27:8, 29:7, 29:20, 34:19, 35:2, 35:15, 38:19, 39:4, 47:21, 50:6, 50:14, 50:17, 51:1, 51:15, 52:5, 53:5, 55:17, 63:7, 64:12, 64:17, 64:21, 65:15, 65:17, 66:3, 68:22, 69:16, 70:7, 73:1
court's
17:6, 17:7,

24:8
courteous
63:20
courts
39:11
covered
50:3
create
27:17
created
32:13, 33:6
creates
25:15, 32:17
creating
32:20
creature
50:6
crist
5:11, 27:20, 28:1, 28:8, 28:11, 28:20, 29:15, 30:1, 30:3, 51:7, 51:17, 51:20, 51:22, 52:1, 52:13, 53:9, 53:11, 54:6, 54:14, 54:20, 55:19, 55:22, 56:8, 56:20, 57:2, 58:1, 58:19, 59:1, 59:6, 59:9, 60:14, 61:3, 61:15, 61:17, 68:13, 68:14, 70:14
criteria
18:5
cross
1:5, 5:2, 11:5, 13:5, 13:16, 14:7, 14:8, 17:20, 25:10, 26:13, 27:13
cross-litigation
11:18, 13:17
crosstalk
54:20, 59:6
current
16:14, 25:13
currently
11:18, 27:12
cut
16:3, 56:2

D

dash
66:14
data
1:11, 4:10, 8:6, 8:17, 9:18, 10:10, 12:14, 12:15, 13:3, 13:10, 15:4, 15:7, 15:20, 15:22, 16:14, 23:3, 24:10, 25:6, 25:8, 27:7, 33:9, 33:16, 35:9, 40:17, 41:5, 41:14, 45:22, 57:13, 59:3, 59:13, 59:17, 59:19, 62:7, 65:17, 69:7, 69:15
date
48:21, 48:22
dated
8:19
day
10:16, 10:20, 11:11, 11:12, 12:3, 21:4
days
11:1, 11:11, 21:19, 23:16, 23:17, 23:22, 28:22, 29:1, 29:21, 37:11, 43:4, 43:21, 55:15, 64:10
dc
4:15
deadline
29:21
dealing
32:16
deals
37:8, 37:9
debate
9:20
deceive
39:9
decide
10:1, 22:3, 23:20, 46:21, 47:11, 47:21, 55:18
decided
10:2, 12:7, 12:9, 15:12, 25:20
decision
8:18, 10:21, 21:5, 21:7, 21:20, 22:4, 22:21, 23:8, 23:15, 26:21, 39:2, 42:9, 55:7, 65:22
decisions
11:10, 21:18, 22:4, 64:8, 66:1
declaration
37:19
decree
49:14, 60:4, 64:13
dedicated
33:15
deem
22:22
deemed
12:5
defendant
24:13
defendants
1:12
defense
27:13
defer
23:17, 65:9, 68:19, 68:20, 70:10, 70:19
deferral
29:2, 29:4, 29:6, 29:11, 29:12, 71:16, 71:19
deferring
23:12
defined
39:5
defines
38:16, 39:15, 40:12, 42:15
definitely
54:6
definition
39:19
definitively
20:6
defraud
39:1, 39:8, 39:18
degrees
63:13
democracy
45:5, 45:9
demurrers
12:7
denial
60:22
denied
8:19, 20:9
deny
23:6
dependence
39:7
dependent
20:7
depos
74:16
deprived
35:16
determinant
23:10
determination
8:6, 13:8, 14:19, 17:14, 22:7, 22:12,

23:18, 24:5, 24:17, 27:16, 28:3, 31:20, 32:12, 35:6, 35:7, 36:3, 36:4, 36:16, 37:2, 37:13, 42:5, 42:20, 43:3, 47:11, 49:3, 49:12, 54:3, 55:16, 56:9, 57:20, 58:11, 58:12, 58:17, 59:13, 59:20, 60:21, 61:13, 62:6, 62:16, 65:9, 65:14, 69:11, 70:6
determinations 20:8, 21:13, 32:5, 37:10, 37:22
determine 26:3, 34:9
determined 19:19, 35:2, 64:22, 65:4, 66:3
develop 32:18, 40:17, 41:14, 50:21
developers 33:1
development 13:10, 14:9, 18:10, 19:7, 32:17, 33:16, 33:19, 41:7, 45:15, 45:19, 48:11, 50:11, 53:7, 62:7
dictionary 39:12, 39:14
digital 73:8, 74:3
diligent 18:13
direction 20:14
directory 29:8, 29:21
dirt 59:20, 60:16
disagree 44:13
disagrees 46:4
discuss 66:13
discussed 56:7, 67:15, 67:18, 69:22
discussion 23:11
disincentive 32:18
disincentives 32:13
dismissed 12:8
disputed 27:12
disrespect 29:5
district 9:6
disturb 17:2
disturbance 15:5
doing 27:7, 40:7, 46:3, 57:17
dollars 33:14
done 19:4, 37:21, 44:9, 49:17, 70:9
down 9:4, 12:2, 15:11, 22:17, 26:3, 39:4, 47:7, 48:9, 61:12, 62:2
drama 10:4
duties 22:3

E

each 52:21, 63:20
earlier 49:4
effect 18:9, 42:21, 43:4, 43:20, 43:21, 50:13, 53:19, 54:18, 55:14
effectively 12:17, 17:20
either 28:15, 28:18, 35:4, 43:18, 47:18, 51:2, 57:12, 69:11, 69:13, 70:11
elected 15:15
elizabeth 6:7, 67:6, 68:3
else 40:5, 63:14
employed 73:12, 74:9
emptor 32:21
enabling 27:6
enacted 12:15, 14:21, 32:9, 44:11
engineering 26:12
enjoy 17:5, 18:18
enter 64:12, 70:8
entered 12:1, 14:13, 15:9, 19:6, 25:19, 65:11, 69:4
entirely 49:13, 49:15, 49:18, 54:5, 56:9
entitled 32:3, 35:12, 61:6
entitlement 58:5, 60:1
entity 38:17, 50:3, 50:4
esquire 4:3, 4:4, 4:11, 4:12, 5:3, 5:11
essentially 11:15
establish 37:11
established 32:8
estoppel 38:12
et 5:2, 43:8
even 17:22, 40:2, 41:16, 45:7, 53:19, 65:17
evening 31:13, 31:15, 33:4, 34:3, 38:18
event 45:13
eventually 10:14
every 10:20, 10:21
everybody 26:2
everyone 45:5
everything 14:18, 22:20, 63:14

evidence
40:16, 41:13, 42:2, 42:6, 44:8, 48:2, 51:9
exactly
33:1, 42:15, 62:20
example
52:8
examples
28:8
except
67:15
excited
64:2
excuse
51:16
excused
72:3, 72:5
exemplarily
37:19
exist
34:16, 44:1, 55:14
existed
47:14
existence
55:12
existing
16:4
expected
28:21
expenses
18:13, 18:22, 19:16, 26:8, 26:10, 37:14
expensive
32:17
expired
69:1, 70:13, 70:21
expires
73:17
explain
38:14
explaining
70:8
extensive
18:12, 18:21, 33:15
extent
34:21, 42:18

F

facade
41:19
facility
41:21
fact
12:2, 16:8, 27:2, 28:16, 37:21, 43:12, 44:2, 44:5, 47:14, 48:20, 49:8, 55:12, 55:15
facts
22:10, 22:11, 40:8, 46:17, 47:4
fairfax
4:7
faith
18:11, 18:20, 19:9, 19:21, 26:9, 33:13, 37:16, 38:5, 38:9, 38:11, 38:13, 38:16, 38:21, 39:5, 39:14, 39:16, 40:11, 40:12, 40:13, 40:16, 42:3, 42:7, 42:12, 46:12, 46:13, 46:22, 47:1, 47:2, 47:6, 47:12, 47:13, 47:14, 47:18, 47:22, 48:1, 48:3, 51:8, 51:11, 53:2, 63:5, 63:18, 64:4
familiar
46:13
fancy
13:20
fantastic
56:13
fauquier
1:2, 11:3, 11:21
favor
44:16, 71:1
february
1:17, 10:14, 73:22, 74:17
feeds
55:15
feel
23:13
felling
26:11
few
63:16
filed
10:8, 11:3, 11:8, 13:2, 13:5, 13:6, 13:7, 13:16, 13:19, 13:22, 14:1, 17:12, 18:2, 19:14, 19:18, 20:9, 26:14, 26:15, 43:14, 64:10, 64:11, 65:2, 65:7, 65:13
filing
30:6
final
15:8, 23:9, 26:20, 63:6
finalized
19:8
finally
9:12, 27:16
financial
73:14, 74:11
fine
56:22
firm
31:10, 34:22, 35:1
first
7:6, 7:22, 10:3, 16:11, 31:12, 37:18, 38:15, 61:5, 69:3
fisher
11:22, 50:18
five
11:20
flow
36:7
focus
25:4
focused
51:8, 51:13
folks
45:7
follow
44:18, 52:11
following
22:2, 66:13
force
13:21, 21:18
forego
25:16
foregoing
73:3, 73:5, 74:4
forget
64:3
form
61:12
former
37:8
forth
37:19
forward
20:21
found
12:16
foundations
59:21
four
10:17, 41:15, 71:6, 71:16, 71:18
frame
57:10
frankly
32:13

fraud
39:11
fraudulent
40:4
free
43:5
freedom
67:20
freeze
14:18
freezes
55:3
frequently
39:12
friday
39:22
front
11:22, 45:2
full
63:10
fully
20:5, 73:5
fundamental
57:8
further
15:3, 15:7, 19:7, 30:3, 43:15, 49:15, 49:16, 55:1, 59:11, 59:18, 61:17, 65:12, 69:6
furtherance
48:12
furthering
69:13

G

garnish
52:17
gather
32:14
gay
11:5
gcs
26:11
general
16:19, 16:20, 32:19
generally
39:15, 44:3
getting
26:19
give
7:8, 28:8, 30:20
given
30:5, 62:21
gives
60:1, 61:14
go
8:8, 8:12, 9:10, 12:21, 16:6, 38:4, 56:1, 56:6, 60:2, 60:8, 63:19, 65:16, 67:1
goes
20:13, 49:20
going
7:2, 7:6, 7:16, 8:1, 9:10, 10:2, 12:8, 15:13, 17:4, 19:12, 21:12, 22:18, 22:21, 26:3, 38:3, 44:20, 64:13, 64:16, 64:17, 66:2, 66:22, 67:1, 67:10, 68:1, 68:12
good
18:11, 18:20, 19:9, 19:21, 26:9, 30:15, 33:13, 37:15, 38:5, 38:8, 38:11, 38:13, 38:16, 38:21, 39:5, 39:14, 39:15, 40:1, 40:10, 40:11, 40:12, 40:16, 42:11, 46:12, 46:13, 46:21, 47:1, 47:2, 47:5, 47:12, 47:13, 47:14, 47:18, 47:22, 48:1, 48:3, 51:8, 51:11, 53:1, 63:5, 63:17, 64:4
gordon
4:11, 31:9
gosh
46:4
govern
36:9
government
42:18, 44:4, 44:9, 44:13, 44:15, 51:14
governmental
18:8, 18:11, 18:19, 20:13, 20:19, 21:6, 21:14, 24:6, 27:3, 33:19, 37:12, 38:1, 43:2, 51:14, 52:19, 52:22, 53:2, 53:3, 54:10, 57:5, 63:3, 66:1, 70:3
grant
21:8
great
30:11, 64:1
ground
59:21
group
13:15
guess
28:21, 46:4, 57:17

H

hall
3:6
hampton
1:6
hand
41:8
handed
39:4
happen
15:13
happened
9:15, 13:4, 14:10, 16:13, 17:8, 22:20, 25:22
happens
20:17
happy
27:19
he'll
61:8
head
47:13, 67:10
hear
7:6, 22:3, 22:18, 31:4, 34:2, 42:3, 68:12
heard
42:10
hearing
8:5, 10:15, 14:12
heart
38:4
heather
6:8
heavily
51:8
heflin
6:9, 31:1, 31:4, 51:16, 51:18, 51:21, 56:11, 56:14, 66:8, 66:21, 71:10, 71:12, 71:15, 71:20, 72:7
helander
6:6, 67:4, 67:5, 67:13, 68:5, 68:6,

70:22, 71:2
held
3:1
helpful
58:16
here
7:14, 12:11, 19:2, 21:20, 22:7, 25:2, 29:12, 31:12, 31:19, 33:4, 34:18, 34:20, 35:3, 37:6, 37:18, 37:21, 38:18, 40:15, 42:10, 45:1, 46:11, 47:15, 48:2, 48:5, 50:16, 50:22, 51:3, 53:20, 54:4, 55:4, 57:18, 64:3, 67:2
hereby
73:4, 74:2
herein
20:5
higher
63:13
highway
9:5
hill
9:4, 9:5
hiring
26:11
historical
55:15
hm
71:11
holders
16:4
honest
38:22, 39:6, 40:11, 40:18
honestly
39:10, 40:5
honesty
39:17
hours
33:16
house
46:1
however
69:8

I

identify
51:19, 67:16
illogical
63:15, 63:16
imagine
61:7
immediate
25:17
immediately
13:18
impact
16:2
impair
17:1
important
34:14, 69:19
importantly
31:14
impose
43:11
improperly
44:15
included
72:9
including
15:5, 27:5
inconsistent
46:12
incorrect
28:15, 28:18, 28:19, 35:11
incurred
19:15, 26:13, 33:14, 48:10, 62:12
incurring
37:14
incurs
18:12, 18:21, 39:6
indeed
19:5, 26:22, 39:13, 41:16
indicates
48:2
industrial
9:6, 9:7, 9:19, 16:1, 33:9, 40:22
information
67:20
initial
42:13
initiate
35:20
initio
11:16, 12:17, 23:1
injunction
14:8, 17:6, 17:7, 17:19, 20:20, 24:8, 24:18, 69:5
input
41:17
inquire
47:1
instead
58:15
instrument
38:19
instruments
38:19
insurance
65:15
intent
39:1, 39:8, 39:18, 40:4, 40:11
interest
73:14, 74:10
interested
34:2
interesting
57:19
interrupting
71:13
intervening
32:6, 33:12
introduce
7:15
invested
33:14
investment
32:14
investments
25:8
invited
65:10
iq
61:22
ironically
64:18
issuance
13:13, 21:6
issue
9:21, 12:10, 12:13, 15:12, 23:4, 23:12, 37:5, 37:6, 38:5, 39:3, 45:15, 65:1
issued
14:10, 33:18, 45:10, 45:18
issues
12:2, 12:7, 12:8, 16:16, 22:18, 23:10, 31:18, 50:13, 56:9, 66:9
it'll
11:21
itself
9:11, 20:18, 24:18, 60:12

J

james
5:5
january
14:12, 14:13, 17:18, 25:18, 27:4, 48:13, 69:4
jenkins
6:8, 21:5,

24:3, 42:4, 49:21, 65:21, 69:12
job 2:20, 30:15
judge 11:22, 22:21, 50:18
judgment 22:5, 52:14, 52:16
july 15:20, 17:12, 25:21, 27:10, 48:12, 62:4

K

kenneth 6:5
kevin 1:6
key 22:7
kidding 28:12, 28:13
kind 43:11, 62:2
knew 19:11, 19:13, 19:14, 19:15, 38:9
knocked 54:4
know 10:13, 17:22, 25:2, 25:21, 26:8, 28:17, 33:1, 38:11, 46:1, 46:3, 47:3, 47:20, 51:1, 55:22, 58:4, 63:18, 63:20, 64:13, 64:16, 64:17, 65:11
knowing 19:17
knowledge 19:4, 22:10, 26:13, 60:10, 73:11, 74:8
knowledgeable 44:17, 46:8

L

lack 27:1
laid 53:1
land 15:5, 40:20, 41:2
landowner 18:6, 18:17, 19:4, 19:6, 21:15, 32:3, 32:10, 36:21, 45:21, 49:9
landowner's 20:4
landowners 32:22, 44:2, 44:20
language 13:20, 14:22, 26:22
last 16:13, 25:5, 26:19, 39:4, 39:21, 48:4, 49:19
lasted 45:3
lastly 31:17
later 10:6, 13:22, 31:2, 47:14
latter 37:9
law 9:12, 11:2, 11:10, 17:3, 17:12, 21:18, 23:14, 23:15, 23:21, 25:9, 25:13, 28:15, 28:18, 31:10, 38:15, 38:16, 38:21, 39:12, 39:13, 39:20, 39:22, 40:1, 40:2, 40:9, 40:12, 41:15, 44:5, 44:17, 46:5, 46:6, 46:16, 47:5, 47:6, 47:9, 48:15, 50:7, 63:19, 65:20
lawful 44:10, 55:17
lawfully 67:18
laws 17:1, 32:11, 33:2, 35:16, 44:6, 48:17
lawsuit 13:5, 43:6, 64:10, 64:12
lawyers 56:1
lead 27:17
least 60:9
leave 29:22
lectern 7:10
lee 2:22, 3:14, 73:2, 73:20
left 27:19, 70:9
legal 14:22, 16:19, 18:1, 19:17, 19:18, 23:2, 27:14, 33:15, 37:14, 44:7, 55:13, 58:9, 60:1, 62:18, 63:1, 63:4, 63:9, 65:5, 65:20, 66:15, 68:13
legality 20:6, 34:17, 34:20, 39:7, 42:17, 55:5, 55:11
legally 19:12, 64:16, 66:2
legislative 10:20, 10:21
legislature 16:22
lengthy 10:15
let's 42:7, 57:6
letter 39:21, 53:15, 62:5, 62:14, 63:11
libes 16:22
life 33:2, 41:20, 47:13, 64:8
light 7:10, 18:1
limitation 15:5
limitations 43:12
line 14:2, 14:17, 16:14, 21:5, 64:3, 65:13, 65:21
literally 19:10
litigants 69:8
litigation 9:12, 14:7, 16:3, 16:17, 17:20, 17:21, 21:9, 23:9,

25:10, 25:20, 26:14, 27:17, 30:13, 36:1, 38:9, 38:10, 42:12, 43:7, 45:14, 45:17, 46:19, 46:22, 47:20, 64:12, 65:6, 66:20
littered 47:8
little 24:22
llc 74:16
llp 4:13, 5:4
located 9:4, 62:7
lock 34:1
logic 63:12
logical 21:9, 22:11, 44:4, 65:21
logically 44:18
long 33:10, 47:16, 47:17, 56:2
long-lead 32:16
long-term 32:16
look 43:10, 52:13, 55:10, 62:3, 64:4
lose 36:18, 65:15, 65:17
lot 25:3, 32:14, 60:7, 60:10

M

mac 5:11
madam 68:14, 72:2
made 34:15, 62:3, 64:18, 65:21
main 3:7
maintain 14:15
make 7:19, 21:17, 22:21, 23:15, 31:20, 32:15, 49:19, 56:6, 64:8
making 24:4
manassas 5:13
mandamus 13:20
mandatory 29:1, 29:8
many 40:13, 44:5
march 11:2, 11:19, 13:1, 64:14
married 64:7
marry 35:22
marti 74:2, 74:15
mary 11:5
marygay 1:5
material 39:6
materials 51:12
matter 9:19, 25:9, 42:13, 48:15, 67:16, 69:4
matters 56:6, 67:16
matthew 5:11, 28:1, 51:22, 52:1, 68:14
maybach 6:3, 7:2, 27:21, 31:7, 56:5, 56:13, 56:18, 56:22, 61:19, 66:7, 66:10, 66:22, 67:4, 67:6, 67:9, 68:1, 68:5, 68:7, 68:9, 70:14, 71:1, 71:5, 71:10, 71:11, 71:14, 71:18, 71:21, 72:4
mean 23:1, 31:22, 35:4, 44:2, 45:21, 57:19, 65:10, 65:19
meaning 39:16, 40:13
means 12:17, 15:10, 32:1, 38:21, 39:10, 39:11, 39:14, 44:12, 58:14, 64:5
meeting 1:15, 3:1, 7:3, 45:2, 66:18, 68:11, 72:11
meetings 41:9
melea 6:3
member 6:5, 6:6, 6:7
members 31:8, 55:10, 66:16
mention 62:15, 65:3
mentioned 28:20
met 19:22
michael 5:3, 72:8
middle 30:21
militates 19:8
million 62:12
millions 33:14
mind 39:16, 60:19
minute 27:18, 51:6
minutes 7:9, 7:12, 16:5, 26:19, 31:5, 72:10
models 26:10
moment 19:11, 57:7
month 15:14
months 25:22
moot 23:3
more 27:17, 29:9, 39:15, 45:7, 48:10, 48:11, 50:19, 55:6, 56:3, 57:4, 60:10, 63:16, 66:7
moreso 51:13
morning 45:3
most 32:9, 69:19
motion 67:17, 67:21, 70:22, 71:5
motions 12:6

motivations
30:10
motive
38:22
move
8:4, 8:9, 20:21, 38:3, 59:20, 60:16, 66:11, 70:18
moved
14:8
moving
17:11, 41:17
much
61:19, 65:10
muddied
34:14
mulliss
6:5, 66:11, 67:2, 67:3, 67:22, 68:7, 68:8, 70:17, 71:3
multiple
11:3
municipal
44:21
municipalities
33:1
municipality
32:2
municipality's
49:10
myself
68:9

N

name
31:9
narrowed
12:1
natural
44:5
nature
42:18, 49:20, 57:21
nd
13:1
necessarily
44:20
necessary
36:5, 36:10, 50:17
need
35:15, 36:13, 38:10, 46:18, 47:1, 52:14, 52:15, 56:6, 58:11
needed
50:21
needs
18:17
negotiation
66:19
neither
36:10, 50:12, 73:12, 74:9
never
12:18
new
15:14, 15:15, 15:20, 66:9
next
8:9, 8:22, 9:13, 10:7, 10:16, 10:18, 11:12, 11:17, 12:19, 13:12, 14:6, 15:13, 16:18, 17:10, 18:3, 18:15, 19:1, 20:1, 20:11, 21:11, 21:22, 22:15, 24:1, 24:21, 26:6, 26:17, 71:8, 71:21
nice
58:13
night
10:11
nobody
63:12
none
36:9, 42:4, 42:5, 43:9, 43:22, 49:17
nonetheless
45:18
notably
13:4, 17:5
notary
3:14, 73:1, 73:16, 73:20
note
23:10, 67:13
nothing
23:5, 28:10, 30:3, 35:3, 48:10, 48:14, 50:19, 67:15
notice
9:22, 14:11
notion
40:3, 46:12
november
15:15

O

object
36:18
objections
13:17, 15:17
objectives
15:18
objects
40:6
obligation
17:1
obligations
18:12, 18:21, 33:15, 37:15
obtain
39:9
obtains
18:7
october
8:19
officer
22:6, 22:8, 22:10, 28:4, 73:2
offices
3:1
official
6:9, 24:3, 32:12, 37:10, 37:13, 37:22, 38:6, 42:19, 43:3, 51:14, 55:8, 72:10
officials
32:5, 41:4, 44:9, 44:15, 44:21, 44:22, 45:14, 45:18, 46:7, 55:1
offsite
41:18
often
8:2
oh
56:22
okay
7:4, 7:18, 7:21, 8:13, 8:14, 9:14, 10:8, 12:22, 17:10, 17:11, 22:16, 28:20, 30:1, 30:14, 31:1, 53:11, 55:19, 56:5, 56:13, 56:18, 57:2, 59:12, 61:15, 63:22, 64:3, 64:5, 66:10, 71:20
once
35:22, 54:2, 62:15
one
15:17, 17:5, 18:7, 18:18, 20:12, 24:19, 25:11, 32:22, 34:3, 35:4, 37:13, 50:12, 51:6, 54:15, 55:6, 55:14, 56:3, 57:4, 57:22, 58:22,

62:14, 71:16, 71:19
only
20:19, 27:15, 29:15, 42:21, 46:14, 50:16, 50:22, 51:3, 66:8
open
40:18, 66:18
operate
36:5, 36:11, 47:9
operates
28:22
opinion
30:8, 57:14, 57:21, 58:21, 70:8
opportunity
56:12
opposition
69:18
option
29:14
options
65:20
order
12:1, 14:14, 14:16, 14:18, 15:1, 15:8, 15:10, 18:17, 19:6, 24:2, 24:8, 24:12, 24:17, 24:20, 25:19, 26:1, 27:4, 27:10, 30:6, 47:17, 48:5, 48:6, 48:7, 48:8, 48:17, 48:21, 48:22, 49:2, 50:1, 50:7, 50:18, 51:1, 57:10, 57:16, 58:12, 59:11, 65:12, 65:14, 69:3, 69:20, 70:8, 71:8, 71:21
ordered
15:1
orders
22:3
ordinance
9:15, 9:17, 10:4, 10:22, 12:14, 12:16, 15:19, 15:21, 16:9, 16:12, 25:4, 25:6, 27:11
organ
50:5
other
19:10, 20:14, 21:1, 23:4, 23:19, 41:12, 49:6, 55:7, 59:18, 61:12, 63:21
others
40:13
otherwise
51:10, 59:18, 60:2, 73:14, 74:11
ought
51:9
out
11:11, 21:9, 46:16, 53:1, 53:6, 54:4, 60:12
outcome
73:15, 74:11
outset
61:14
outside
45:8
over
67:2
overhead
9:6
overturns
69:11
own
13:22
owners
11:3

P

packet
14:17
page
2:1
pages
2:21
paper
25:3
parallel
50:15, 51:3
parenthetically
23:11
part
22:7, 33:18, 50:4, 59:18, 72:10
participated
41:9
particular
49:8, 50:1
particularly
32:15
parties
11:22, 14:13, 14:14, 15:11, 27:5, 29:10, 73:13, 74:10
partnership
33:13
parts
18:17
party
29:16
pass
17:3, 47:7
passed
25:5
passing
11:14
past
17:9, 22:19, 22:20, 32:1, 32:2, 33:21, 33:22, 36:21, 38:3, 47:15, 49:9, 49:10, 49:11, 49:12, 50:8, 50:9
patrick
4:4, 7:15, 8:8, 12:21
pay
16:22
pending
9:11, 11:6, 14:4, 14:11, 16:3, 16:17, 17:19, 25:14, 52:21, 54:12, 54:17, 66:17, 68:22, 69:22, 70:20
people
19:12, 30:10, 30:11, 43:8, 64:1
percent
32:10
period
63:10
periods
69:1, 70:13, 70:21
permission
29:13, 36:12
permit
10:9, 33:10, 33:18, 34:21, 34:22, 35:10, 35:13, 35:22, 36:2, 36:4, 36:14, 36:19, 41:4, 41:8, 45:10, 49:5, 49:6, 60:9, 60:15, 62:18
permits
11:9, 15:3, 15:6, 48:10, 59:12, 60:6,

69:13
permitted
9:18, 12:18, 15:22, 66:9, 66:13, 67:18
permitter
49:16
perpetuity
41:20
perspective
25:9, 54:10
pertaining
66:17
petersen
4:3, 4:5, 7:8, 7:13, 7:18, 7:21, 8:12, 8:14, 13:1, 27:22, 28:7, 28:10, 28:12, 29:3, 29:18, 30:2, 30:8, 30:16, 30:19, 30:22, 31:2, 31:8, 33:7, 34:2, 34:11, 34:16, 35:6, 36:14, 37:3, 37:7, 38:7, 42:4, 44:1, 49:22, 61:5, 61:20, 61:21
petersen's
37:17
petition
8:5, 8:14, 8:20, 9:9, 13:21, 17:15, 23:7, 30:13, 62:3, 65:2, 65:7, 65:13
petitioners
12:4
physical
41:7
piece
64:6
place
14:19, 50:18, 53:5, 63:8
placed
9:19
plain
26:22
plaintiffs
1:7, 12:11, 13:15, 14:8, 24:14, 25:12, 64:19
plan
13:2, 13:7, 13:10, 14:10, 19:14, 25:14, 33:19, 45:16, 45:19, 50:12, 53:7, 55:5, 62:9, 62:18, 70:3
planet
74:16
plans
41:16
play
21:9
plc
4:5
please
14:6, 20:11, 26:6, 56:20
plenty
43:10
pllc
5:11
point
23:5, 33:22, 49:19, 50:20, 54:8, 57:4, 57:17, 61:8, 61:11, 64:18, 69:19
pointed
44:1
points
62:1, 63:17
policy
65:15
poses
25:7
position
24:16, 39:6
possible
69:10
posts
59:21
posture
66:20
potentially
23:12
power
8:2, 36:6, 41:18, 59:15
powerpoint
7:16, 8:2
pre-amended
58:7
precisely
33:4
preliminary
12:6
prepared
74:3
present
6:2, 7:7
presentation
7:8, 7:9, 7:16, 8:4, 37:17
presented
66:9
preserved
48:9, 48:18, 50:19
preston
5:4
presume
23:7, 51:9
presumed
21:15, 22:8, 22:12, 22:13, 26:21, 28:4, 28:21
presumes
23:21
presumption
28:6, 28:9, 44:7, 44:8, 44:12, 44:19
presumptively
44:17, 46:8
pretty
64:2, 64:7, 65:10
prevent
13:22
prevents
25:13, 50:1, 55:1
previous
2:1
primary
12:9, 12:13
principle
42:10
prior
32:4, 34:4, 35:8, 35:19, 35:21, 37:1, 37:2, 50:10, 61:6
probably
14:16
problem
32:19, 57:8
procedure
7:5
proceed
51:5, 56:21
proceeding
35:20, 50:16, 53:20, 54:5, 55:21, 74:4
proceedings
50:15, 51:4, 54:7, 73:3, 73:5, 73:6, 73:9, 74:5, 74:7
process
10:12, 22:1, 27:8, 45:12, 57:12, 59:3, 60:7, 60:11
professional
63:20
progress
57:12, 59:22,

61:1, 61:9
progressing
58:15, 59:3
prohibited
69:16
prohibits
27:4
project
18:10, 18:14, 33:2, 33:3, 36:11, 36:12, 49:8, 50:22, 59:14, 62:7, 62:10
prong
19:22
proof
44:14
proper
9:22, 14:21, 40:14, 53:18, 58:21
properly
12:5, 12:15, 13:6, 14:21, 26:14, 42:5, 44:10, 44:11
property
8:21, 9:2, 10:6, 10:10, 11:3, 13:3, 14:9, 15:4, 15:8, 17:17, 23:3, 24:11, 26:11, 31:21, 33:17, 41:7, 64:6, 69:15
proposition
16:20
prospective
16:2, 16:13, 27:15, 49:15
proves
58:14
provide
68:15
provided
17:1, 69:17
provision
8:16, 43:12
provisions
67:19
public
1:15, 3:1, 3:14, 7:3, 9:22, 10:15, 41:12, 41:17, 41:21, 58:5, 73:1, 73:20
pull
8:10
purchased
10:6, 40:20, 41:1, 41:2
purpose
10:1, 14:17, 39:17
purposes
52:4, 52:9, 70:5
pursuant
3:13, 35:9
pursue
19:7
pursuit
18:13
pushed
25:2
put
24:16, 39:20, 46:1, 50:18, 59:20
puts
44:15

Q

qualified
18:7, 73:8
quasi-judicial
38:17, 50:5
question
27:20, 30:5, 33:20, 37:17, 38:2, 38:5, 40:15, 43:17, 52:3, 52:12, 55:9, 55:13, 56:3, 58:22, 61:10
questions
12:12, 27:19, 28:2, 34:3, 41:10, 41:11, 51:6, 56:15, 56:16, 56:19, 61:17, 70:15
quickly
36:19
quite
40:18, 45:4
quo
14:15, 27:6, 48:9, 48:16, 48:19, 50:19
quote
42:21
quoted
61:8

R

raft
60:6
raised
27:13, 31:18, 41:11, 41:21, 42:8, 61:11
rather
21:8, 29:8, 40:21
reached
22:11
read
25:3, 52:18, 54:16, 54:22
readjust
15:18
really
9:14, 38:18, 55:6, 65:2, 66:5
reason
16:14, 35:17, 50:16, 50:22, 51:3
reasons
24:19, 50:2, 68:17
rebut
28:9
rebuttable
28:6
rebuttal
56:12, 56:15, 66:8
rebuttals
66:7
received
19:11
recess
67:12, 72:6
recognition
17:16, 24:6, 36:20, 58:5
recognitions
50:12
recognize
44:19, 50:8
recognized
62:13
recommend
69:9, 70:10
recommendation
68:16, 69:3, 70:1
reconstruction
49:17
record
51:21, 72:10, 72:12, 73:10, 74:7
recorded
2:22, 73:6
recording
73:9, 74:4
recounted
33:7
redirect
36:7
reduced
73:7, 74:5
refer
53:15
referenced
20:5

references
62:8
reflect
41:17
refuse
48:18
regardless
20:16
registration
73:16
regularity
44:7
reiterate
29:20
related
15:3, 69:6,
69:14, 73:12,
74:9
relatedly
34:19
relevant
22:10, 25:10,
46:15, 55:6,
55:20
reliance
18:20, 19:9,
19:21, 26:16,
27:2, 32:2,
36:22, 37:21,
38:6, 49:10,
50:9, 63:18,
64:4, 64:5, 66:4
relied
20:22, 22:11,
27:3, 39:13,
42:19, 42:20,
43:19, 46:15
relies
18:10, 43:19
rely
21:15, 32:4,
36:15, 39:12,
44:3, 44:20,
45:11, 46:5,
48:19, 49:12,
63:5, 64:5, 64:9
relying
52:7, 54:11,
57:6, 64:14,
64:15
remain
42:21, 43:20
remains
18:9
remarks
31:12
remedy
27:15
remember
24:14
remove
15:22, 33:12
removed
25:5
removes
58:8, 61:13
repeal
65:3, 65:8
repeat
40:3
repeats
39:19
replacing
32:20
reporter
73:1
represent
30:10
representation
68:13
representing
31:10
request
17:12, 17:18,
20:4, 20:8,
57:11
requested
21:13
requesting
62:6
required
26:16, 42:16,
59:16
requirement
51:15
requirements
22:4, 37:4,
37:11, 38:4,
43:22, 46:13,
47:2
requires
42:21
resolution
47:19, 70:7
resolved
20:6, 36:1,
65:6
resolves
38:10
respect
30:11, 42:17,
42:22, 43:2,
43:3, 59:12,
59:17, 64:1
respectfully
62:5
respond
28:22
responded
63:11
response
19:2, 53:15,
53:16
result
19:21, 23:6
retrospective
16:22, 49:14,
49:18
retrospectively
16:21
reverse
34:8
reviewed
37:3, 38:7,
48:2, 51:12
reviewing
70:5
revisited
24:2
rezoned
40:20
rezoning
8:21, 14:21,
19:16, 64:10
richmond
5:7
right
7:13, 7:14,
7:21, 15:14,
17:22, 18:1,
21:12, 23:2,
23:19, 25:17,
26:18, 28:13,
30:22, 34:4,
34:6, 34:7,
35:20, 37:1,
44:18, 46:20,
47:2, 49:11,
58:9, 58:11,
58:13, 58:21,
59:5, 59:7,
60:3, 60:8,
60:12, 61:22,
62:14, 62:17,
65:19, 66:11,
67:9, 70:17
rights
8:6, 8:15,
8:20, 16:4,
16:10, 16:16,
17:2, 17:4,
17:14, 17:16,
18:5, 20:9,
20:16, 20:18,
21:8, 24:7,
24:18, 26:4,
27:12, 30:13,
31:17, 31:21,
32:7, 32:20,
34:1, 34:9,
36:3, 36:16,
37:5, 42:16,
46:9, 48:14,
48:17, 49:3,
50:10, 54:3,
55:16, 57:20,
58:10, 58:12,
58:17, 59:13,
59:19, 60:18,
60:21, 61:13,
62:6, 63:8,
65:4, 65:8,
65:14
risk
25:7, 32:10,

58:15, 58:16, 61:9, 61:14
road 4:6, 8:21, 9:3, 31:22, 61:12, 62:8
roll 67:1
roll-call 68:2
room 29:2, 29:3
rule 20:3
ruled 19:20
rules 7:5, 22:2, 70:18
running 7:14
runs 11:11

S

said 8:2, 8:3, 11:15, 15:1, 16:1, 17:5, 19:3, 20:16, 29:9, 29:20, 35:6, 49:4, 49:21, 50:18, 52:22, 53:22, 59:15, 61:5, 62:22, 63:2, 63:14, 63:18, 65:12, 73:8, 73:9, 74:5, 74:6
samaritan 40:1
same 13:16, 37:11, 52:18, 63:7, 65:4, 65:7
sampling 26:10
sanctions 40:1
say 23:21, 25:9, 34:3, 43:5, 45:5, 45:9, 46:2, 46:18, 47:3, 47:10, 54:15, 54:16, 63:4
saying 8:1, 57:15, 60:17, 65:22
says 11:11, 15:11, 23:15, 24:9, 29:7, 36:14, 49:8, 49:15, 58:3, 58:4, 59:11, 62:5
scale 44:16
scene 45:4
schedule 72:1
scheper 4:12
school 63:19
schreiber 74:2, 74:15
scintilla 42:2
screwed 47:4
scullin 6:7, 30:4, 30:14, 67:7, 67:8, 68:3, 68:4, 70:16, 71:4
sd--6 13:13
sdp 21:7
sdp--6 13:4, 13:11, 22:22, 24:7
second 69:21, 70:22
seconded 67:22
secondly 31:15, 53:20
seconds 27:19
secret 40:19, 41:6, 45:6
section 11:8, 26:16, 27:1, 66:14
sector 9:19
secure 35:20, 41:4
security 26:11
see 9:7, 31:2, 38:10, 46:19, 48:19
seek 15:2, 39:18
seeking 8:20, 35:5
seeks 17:15, 53:21, 54:2
seem 46:3
seems 54:9, 57:12, 59:2
seminal 39:2
sense 57:21, 58:17, 58:18, 62:2, 69:21
sensible 44:11
separate 35:14, 51:4, 54:5, 54:7
september 10:5
service 8:6
services 1:11, 4:10, 8:17
session 66:13, 67:11, 67:14, 67:17, 67:19, 68:10
set 11:19, 12:2, 37:19, 57:7
setbacks 36:9
seven 12:3
shall 15:2, 15:6, 22:4, 22:8, 24:9, 28:4
shield 21:2
shortly 68:17
should 22:13, 34:8, 45:20, 46:1, 54:9, 70:6
should've 16:1
show 18:17, 28:14, 66:3
showed 41:13, 45:8
showing 44:14
shows 40:16
shred 42:2
sic 13:14, 20:2
side 31:5
sidley 4:13, 31:10
signature-1apgj 73:18
signature-k9lvk 74:12

significant
18:8, 18:11, 18:13, 18:18, 20:12, 21:14, 24:5, 27:3, 28:16, 32:13, 33:19, 37:12, 38:1, 42:18, 43:2, 63:3
significantly
62:10
similarly
52:18
simply
33:21, 34:18, 36:20, 42:6, 43:20, 48:1, 49:8, 49:19, 55:12, 59:22
sir
27:22
site
13:2, 13:7, 13:9, 14:10, 19:14, 25:13, 33:18, 45:15, 45:19, 50:11, 53:7, 55:5, 62:9, 62:18, 70:2
sitting
38:17, 38:18
six
10:5
skills
73:11, 74:8
slide
8:22, 9:13, 10:7, 10:18, 11:17, 12:19, 13:12, 14:6, 16:18, 17:10, 18:3, 18:15, 19:1, 20:1, 20:11, 21:11, 21:22, 22:15, 24:1, 24:21, 26:6, 26:17
soil
26:10
some
16:19, 28:8, 28:16, 33:22, 39:20, 61:8, 61:11, 61:12
somebody's
17:4
somehow
25:13, 27:8, 64:19
someone
39:5, 40:5, 40:6, 45:21, 45:22, 46:4
something
23:13, 23:20, 29:16, 43:8, 43:14, 58:13, 60:1, 64:5
somewhere
61:8
sorry
36:3, 43:1, 47:4, 48:13, 51:17, 51:18, 52:1, 52:12, 53:12, 55:9, 58:18, 66:14, 68:21, 70:19, 71:18
sort
10:3, 13:19, 23:10, 32:21, 33:5
sound
26:10
speak
30:9
speaker
30:15
special
10:9, 33:10, 33:18, 34:21, 34:22, 35:10, 35:13, 35:22, 36:2, 36:3, 41:4, 41:8, 45:10, 62:17
specific
14:22, 18:10, 18:14, 49:7, 59:14
specifically
67:16, 69:16
spend
10:11
sponte
29:17
spring
47:13
st
10:5
staff
7:4, 7:7, 41:9, 41:10, 41:12, 66:16
stand
15:11, 26:3
standard
28:19
standing
12:3, 53:17, 53:20, 64:20, 64:22, 65:1
start
7:3, 7:14, 36:12, 36:17, 54:9, 67:2
starting
60:8
starts
9:14
state
39:16, 43:12
stated
68:17, 68:18
statement
9:22
statements
7:12, 16:20
states
28:3, 32:9, 44:6
stating
14:14
status
14:15, 27:6, 48:9, 48:16, 48:19, 50:19
statute
18:18, 21:10, 21:14, 32:8, 42:14, 42:15, 42:20, 43:9, 44:1, 46:10, 57:22
statutes
16:20, 37:5, 43:11, 43:19, 44:18
statutory
8:15, 11:2, 32:20
stay
43:17, 43:18
staying
69:5
stays
43:14, 69:5
step
7:6, 10:3
still
14:3, 35:13, 40:17, 41:14
stop
14:9, 21:3, 25:11, 63:10
straight
38:4
street
3:7, 4:14, 5:6, 5:12, 11:7
strike
53:5
sua
29:17
subject
8:16, 10:19, 43:6, 43:7, 50:6
subjective
40:10
submissions
34:15, 51:12

submit
62:5
submitted
26:9, 37:20, 39:21, 72:8
subsequent
45:13, 53:22
subsequently
58:6
substantial
18:21, 25:7
substantive
16:10, 47:11
substation
41:18
sued
21:3
sufficient
36:10
suit
11:3, 11:7, 13:19
suite
5:6, 5:12
suits
14:3, 63:19
summary
68:16
summer
25:5
sup
10:10, 10:17, 11:15, 16:4, 19:11, 21:7, 22:19, 52:8, 52:9, 53:6, 55:5, 62:8, 70:2
sup-
17:17, 22:22, 24:7
supersedeas
52:14, 52:15
supervision
74:6
supervisors
39:3
supreme
29:7, 29:20, 47:20
sure
7:19, 27:21, 45:4, 52:11, 53:13, 56:6
susan
6:6
suspend
52:6, 52:16
suspended
52:9, 52:17, 54:11, 54:12, 54:17, 57:6, 63:2, 70:4
suspension
53:18, 54:21, 54:22
sword
21:2
sworn
73:5
system
32:21

T

take
15:19, 17:4, 26:8, 53:19, 64:7, 66:22
taken
14:3, 14:5, 19:3, 19:17, 28:17, 47:16, 48:20, 52:20, 53:5, 67:12, 72:6, 73:4
takes
32:14
taking
43:15, 50:1, 55:1, 70:11
talk
18:4, 24:22, 25:14, 38:15
talked
26:7, 63:17
talking
10:11, 23:5, 53:14, 56:1
talks
18:6, 62:9
tax
34:18
taxpayer
27:18
taylor
5:4
tell
29:19
testing
41:20
text
22:19, 25:21, 62:15
th
8:19, 9:16, 10:15, 11:2, 14:13, 17:12, 62:4, 69:4
thank
9:8, 30:1, 30:14, 31:7, 51:5, 51:7, 61:16, 61:18, 61:19, 61:21, 66:6, 70:14, 71:7, 72:5
thanks
31:3
thereafter
73:7
therefore
21:7, 21:16, 66:3, 70:4, 70:10
thing
20:12, 46:2, 46:15, 54:15, 58:13
things
18:6, 31:11, 36:10, 49:17, 59:15
think
14:16, 25:3, 28:14, 46:14, 51:9, 53:4, 56:8, 57:8
thinks
40:6, 40:7, 40:8, 40:9
third
37:15
thought
46:17, 46:18
thousands
63:13, 64:11
threatened
43:7
three
7:11, 10:17, 18:6, 18:12, 18:16, 18:20, 31:11, 37:4, 47:21, 69:2
three-day
11:19, 12:3
three-part
18:5
through
9:10, 16:5, 16:6, 37:7, 41:11
throughout
39:20, 47:9
thumb
44:16
time
29:5, 32:16, 52:16, 56:2, 62:14
timely
11:8, 18:2, 19:18, 26:14
timing
56:8
title
19:13
titled
66:14
today
11:20, 33:21, 35:3, 42:11, 60:22, 65:9,

70:1
todd
4:11, 31:6, 31:7, 31:9, 52:11, 53:8, 53:10, 53:12, 54:13, 54:19, 54:21, 55:20, 57:19, 58:3, 58:20, 59:5, 59:7, 59:10, 61:2, 61:4, 61:16, 72:2
told
34:11
tonight
8:4
took
37:16, 50:20
touch
31:15
tough
28:13
towards
33:16, 57:13, 59:3
town
1:9, 1:10, 3:6, 4:2, 7:6, 7:7, 8:17, 9:16, 9:17, 10:13, 10:16, 11:5, 13:8, 13:17, 13:22, 15:2, 15:14, 15:15, 15:16, 16:7, 17:13, 23:6, 24:3, 24:4, 24:9, 24:13, 24:15, 27:5, 27:9, 31:18, 33:11, 33:14, 33:17, 36:17, 38:20, 41:3, 41:9, 42:8, 43:15, 45:2, 45:7, 45:8, 45:14, 45:17, 46:2, 50:1, 50:4, 50:5, 50:17, 50:20, 53:22, 54:1, 56:11, 60:20, 62:16, 66:20, 69:13
town's
9:19, 36:20, 36:22, 46:11, 50:9
traffic
36:7, 59:15
tran
29:7, 29:10
transcriber
74:1
transcript
74:3, 74:6
transcriptionist
73:8
transmit
13:18
tree
26:10
trial
11:19, 12:3, 22:17, 64:13
triggered
53:21
true
73:10, 74:6
trusts
40:1
try
63:19, 69:1
trying
59:2
tuesday
1:17
turn
31:17, 34:12, 36:6, 42:7, 48:4
turns
7:11, 46:16, 47:12
two
5:5, 14:3, 18:10, 18:20, 26:19, 27:4, 28:2, 37:5, 37:13, 37:18, 38:4, 56:1
type
49:6
typewriting
73:7, 74:5

U

unanimously
15:21
uncertainty
25:16, 58:8, 58:14, 60:18
unconscionable
39:9, 39:18
under
8:7, 11:8, 16:12, 17:14, 18:1, 19:13, 19:22, 21:13, 24:5, 24:7, 26:15, 26:22, 52:10, 57:6, 59:4, 62:18, 62:22, 63:4, 63:9, 64:12, 65:5, 65:19, 66:4, 67:19, 69:22, 70:4, 74:5
understand
39:14, 54:7, 57:14, 58:1, 60:14, 60:16
understanding
40:14, 57:9
understood
42:6
unidentified
30:15
uniform
39:22
unilaterally
29:12
unless
21:19, 35:17
until
14:19, 15:8, 15:12, 19:7, 20:4, 23:17, 25:20, 38:11, 41:7, 45:3, 47:19, 60:5, 65:6, 68:20, 70:6, 70:11, 70:19
untold
33:15
urge
51:4
use
9:18, 10:9, 12:17, 15:19, 15:22, 25:6, 32:3, 33:10, 33:12, 33:18, 34:4, 34:10, 34:21, 34:22, 35:8, 35:10, 35:13, 35:17, 35:18, 35:22, 36:2, 37:1, 41:1, 41:4, 41:8, 45:10, 49:11, 61:6, 62:17, 65:20
using
7:19
utterback-pair
2:22, 3:14, 73:2, 73:20

V

va
4:7, 5:7, 5:13
valid
17:17
van
6:4
version
34:4, 35:8, 37:1, 49:11, 50:10, 58:7, 61:6

vest
42:16
vested
8:6, 8:15, 8:20, 16:16, 17:2, 17:14, 17:16, 17:22, 18:4, 20:9, 20:15, 20:17, 21:8, 24:17, 30:12, 31:16, 31:20, 32:7, 32:20, 34:9, 36:3, 36:16, 37:4, 44:18, 46:9, 48:15, 48:17, 49:3, 49:11, 50:10, 54:3, 55:16, 57:20, 58:10, 58:12, 58:17, 59:13, 59:19, 60:18, 60:21, 61:12, 62:6, 62:13, 62:17, 63:8, 63:9, 65:4, 65:7, 65:14
vice
6:4
videos
16:6
view
9:7, 37:16, 48:8, 53:4
violate
17:7, 24:18, 30:6, 48:6, 48:7, 57:16
violated
17:6, 20:20, 24:8
violates
51:1
violating
24:16
virginia
1:10, 1:16, 3:8, 3:15, 8:7, 8:16, 11:9, 17:14, 29:7, 32:7, 38:15, 38:16, 38:21, 39:11, 39:20, 40:12, 43:10, 44:5, 47:20, 50:7, 65:19, 66:14, 67:19, 73:21
void
11:16, 12:16, 23:1
vote
10:17, 45:10, 67:1, 68:2
voted
15:21

W

wait
46:19, 47:10, 47:19, 65:9, 70:6
waited
65:6
waive
23:19
walked
37:7
want
24:22, 25:4, 29:4, 29:11, 30:17, 31:12, 31:15, 38:13, 38:14, 41:13, 44:12, 62:1, 62:11, 62:13, 62:16
wanted
40:17, 41:14, 45:6, 56:5, 65:3, 68:15
wants
41:14, 45:22
warrenton
1:9, 1:10, 1:16, 3:6, 3:8, 4:2, 8:18, 9:17, 11:5, 25:17
warrenton's
9:5
washington
4:15
water
36:7, 59:15
way
12:10, 24:11, 30:13, 51:2, 52:18, 57:11, 63:15, 70:11
we'll
46:20, 46:21
we're
9:10, 46:13, 50:22, 51:3, 60:3, 61:5, 68:12
we've
49:17, 51:6
wear
63:18
week
12:1, 13:4
weekend
11:12
weeks
10:5, 11:20
weight
47:6
went
10:16, 13:7, 16:4, 32:22, 48:14, 62:1
whereas
49:14
whether
9:21, 12:13, 22:5, 26:4, 31:20, 38:11, 40:6, 41:17, 45:21, 46:20, 46:21, 47:12, 47:21, 55:13, 55:16, 57:5, 58:10, 60:18, 61:10, 63:1, 63:4
whiteford
5:4
whole
60:5
wholly
20:7
win
34:6
wins
46:22
wire
7:16
within
9:18, 11:1, 11:11, 21:19, 23:16, 23:22, 28:22, 37:10, 41:15, 61:10, 64:10
without
15:5, 29:13, 39:1, 39:8, 39:11, 40:4, 60:21, 61:4
withstanding
32:6, 45:12, 45:13
witness(es
73:4
word
64:4
words
19:10, 20:14, 21:1, 23:4, 41:12, 63:13, 64:11
work
33:16, 44:10, 45:14, 46:14, 60:12
worked
41:3, 45:9
working
33:13, 46:7
works
46:6, 48:1

would've
20:20, 21:1, 53:17
wouldn't
60:5
writ
13:20
written
24:12
wrong
38:14, 40:7, 40:8, 46:16, 47:3, 47:5

Y

yeah
30:19, 56:21, 59:9
year
16:13, 39:4, 45:15
years
33:12, 47:21
yellow
7:11
yep
30:2, 30:16
yourself
51:19

Z

zero
71:6
zoned
9:7, 40:22
zones
33:9
zoning
5:10, 6:8, 6:9, 8:18, 9:11, 9:15, 9:17, 10:22, 11:10, 11:14, 12:14, 14:20, 15:19, 15:21, 16:12, 17:13, 19:2, 19:20, 20:2, 20:15, 22:19, 23:7, 24:19, 25:6, 26:20, 27:11, 32:4, 32:5, 32:11, 33:8, 34:1, 34:4, 34:8, 34:10, 34:18, 35:1, 35:8, 35:10, 35:12, 35:16, 35:21, 36:15, 37:1, 37:8, 37:9, 37:12, 37:22, 38:6, 38:7, 39:7, 40:21, 42:9, 42:19, 43:1, 43:3, 44:22, 47:17, 49:11, 49:13, 50:11, 50:20, 50:21, 54:1, 55:1, 55:7, 55:8, 58:6, 60:11, 61:7, 61:11, 62:15, 62:21, 63:11, 66:12

$

$10,000
52:15, 52:17
$3.5
62:12

0

00
1:9, 1:18
03
10:10, 17:17, 22:22, 24:7
08
73:17

1

1
30:15
10
9:16, 73:22, 74:17
100
32:10
1021
5:6
12
27:18
128
11:6, 68:21, 70:20
14
10:15, 14:13, 48:13, 69:4
15.2
8:7, 8:16, 11:8, 17:15, 18:4, 19:13, 19:22, 21:13, 24:5, 26:15, 27:1, 66:4, 70:4
1501
4:14
16
11:2
17
72:12
18
13:8

2

2
45:3
2.2
66:14
20
7:9, 10:5, 17:12, 31:5, 62:4
200
5:12
20005
4:15
2001
5:6
20110
5:13
20186
3:8
202
4:16
2021
9:15, 9:16, 10:5, 11:14, 12:13, 33:8, 34:17
2022
8:20, 10:8, 16:10, 62:8
2023
10:15, 11:2, 13:1, 16:10, 17:5, 48:15, 62:9
2024
13:8, 13:14, 14:2, 15:15
2025
8:19, 14:12, 15:20, 16:9, 17:3, 17:12, 17:18, 25:18, 25:21, 27:4, 27:11, 33:11, 48:13, 54:2, 62:4, 62:15, 65:3, 65:8, 69:4
2026
1:17, 11:19, 73:17, 73:22, 74:17
21
3:7, 10:5, 14:12
22
10:10, 13:1, 14:12, 17:17, 22:22, 24:7
2203
10:17, 11:15
22030
4:7
2285
26:15, 52:4, 52:10, 52:18, 54:16, 54:17, 57:6, 69:22,

70:4
2288
11:8
23
11:6, 13:4, 13:11, 13:13, 22:22, 24:7, 47:16, 68:21, 70:20
23000128
1:9
2307
8:7, 8:16, 17:15, 18:4, 19:22, 21:13, 24:5, 26:16, 27:1, 37:6, 66:4
2309
28:2
2311
37:7
23219
5:7
24
8:19, 47:16
25
7:3, 17:12, 62:4, 66:17
2510
4:8

3

3
7:3
30
10:20, 11:1, 11:11, 45:3, 64:10
31
73:17
3306
5:8
3711
66:15
3970
4:6

4

40
61:22
42
9:3
459
4:8

5

5
1:18
551
5:14
571
4:8, 5:14

6

6
72:12
60
21:19, 23:17, 37:10, 43:4, 43:21, 55:15
619171
2:20
6859
5:14

7

736
4:16
74
2:21
7796769
73:16

8

804
5:8
85
11:8
8760
4:16
8th
15:20

9

90
23:16, 23:17, 23:22, 28:22, 29:1, 29:21
9200
5:12
977
5:8
9th
11:19