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November 24, 2025

VIA FEDEX, E-MAIL, AND HAND DELIVERY

Town of Warrenton Board of Zoning Appeals
c/o Heather E. Jenkins
Zoning Administrator
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: Statement of Justification in Support of Appeal Pursuant to Virginia Code § 15.2-2311(A)

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

The undersigned, as counsel to Amazon Data Services, Inc. ("Amazon"), hereby files pursuant to Virginia Code § 15.2-2311 this Statement of Justification in support of its appeal of the zoning determination letter dated October 24, 2025 (the "Zoning Determination") for the reasons set forth below.

I. Executive Summary

The Town of Warrenton ("Warrenton") gave Amazon unequivocal permission and assurances that Amazon could build a data center on its property in Warrenton: the Warrenton Town Council (the "Council") revised its zoning ordinance to allow data centers to be built on industrial district land by Special Use Permit ("SUP"); it then legislatively approved an SUP authorizing Amazon to build one such data center; and the Zoning Administrator then approved Amazon's detailed site plan for that data center. Relying on these actions, Amazon moved with its development: it engaged contractors; began testing and preparing the land for future construction; coordinated with utility, security, and other land management companies; and performed many other activities and incurred other obligations oriented towards construction of its data center. These were not small steps. They required real money, long-term commitments, and a genuine investment in Warrenton's future. Amazon was comfortable making these investments precisely because of Warrenton's actions and assurances.

Virginia law is clear that a landowner who makes significant investments in its land in good faith reliance on governmental action is protected against subsequent adverse changes in the law. That is what happened here. While the Council further amended the Town's zoning laws to no longer permit data centers in such industrial zones, Amazon's previously approved and started project is unaffected. Amazon's rights in its project have "vested."

Yet when asked to confirm those vested rights, the Zoning Administrator demurred on the grounds that third parties had initiated litigation challenging the Special Use Permit and Site Plan, and noting that Amazon had paused its development pending resolution of the litigation. The Zoning Administrator erred. Nothing in the Virginia Code makes the vesting of property rights contingent on the absence of litigation. Indeed, reading such a requirement into the Code would gut these legal protections. And in fact, Virginia law is clear that rights may vest even where the relied-upon governmental action it later determined to have been contrary to law as an initial matter. What is more, Amazon's rights had vested prior to any litigation being filed and long before Amazon voluntarily agreed to pause its development in deference to first resolving community concerns.

For all these reasons, and more discussed below, we respectfully ask that the Board of Zoning Appeals recognize and affirm Amazon's vested rights.

II. Background

Amazon is the owner of a 41-acre industrial-zoned property (Parcel Number 6948-69-2419-00) located on Blackwell Road in the town of Warrenton (the "Property"). On August 10, 2021, the Council adopted a Zoning Ordinance Text Amendment ("ZOTA"), the express purpose of which was to allow data centers to be built in industrial districts, but only pursuant to a subsequently-approved SUP.

Amazon is the infrastructure side of Amazon Web Services ("AWS"), a comprehensive cloud computing platform that provides storage, compute, and database services globally. To support its cloud services, Amazon constructs and operates network data centers at geographically-appropriate locations. The Property meets Amazon's location parameters, including its location in relation to other Amazon data centers. On September 21, 2021, more than 30 days after the Council adopted the ZOTA and without a legal challenge brought concerning the ZOTA, Amazon purchased the Property. It thereafter began discussions with Town officials about pursuing a SUP to authorize a data center on the Property. In April 2022, in reliance on the ZOTA and its subsequent discussions with Town officials, Amazon submitted its SUP application to build a data center (the "Project") on the Property. The Project, once approved, would be a major driver of economic revenue, employment, and economic investment in Warrenton. Amazon's SUP application was complete and made clear its intention to use the Property as a data center.

While awaiting approval, Amazon engaged with Town residents and staff regarding the Project. In response to feedback, Amazon made a number of significant changes to the Project, including agreeing to bury power lines, perform sound tests at every stage of construction, and add a brick façade to the data center to improve its aesthetic appeal. Amazon also requested and obtained a zoning determination related to application of the Town's noise ordinances. On February 14, 2023, after nine months of review by Town staff, a public hearing before the Town Planning Commission, multiple public comment sessions at public meetings, and careful consideration, the Council approved Amazon's SUP (Case Number SUP-22-3) for the Project.

In reliance on that approval, Amazon immediately began taking steps to advance the Project. These steps included contracting with engineering and construction firms, performing environmental due diligence on the site, preparing its Site Plan submission, and engaging with the Town, the State, and other public and private partners on the development of the Project. Amazon also immediately began active development of the site itself in February 2023, initiating tree removal and soil work to ready it for future building.

Within thirty days of the SUP approval, and after Amazon had already incurred legal obligations in connection with the Project and invested significant time and resources in reliance on the SUP approval, some Warrenton residents filed civil litigation to enjoin the development of the Project (the "ZOTA Action"). The ZOTA Action raised a number of challenges, almost all of which were based on concerns and objections that had already been heard at numerous and comprehensive public hearings. The Town was served on March 21, 2023, and Amazon filed a motion to intervene on April 13, 2023. On December 13, 2023, the Circuit Court dismissed as legally baseless almost all of the plaintiffs' claims, leaving for trial only the question whether the ZOTA underlying the SUP had been properly adopted. Trial on that sole remaining issue is scheduled for March 2026.

In the meantime, Amazon submitted an initial site plan on March 22, 2023 and a subsequent revised Site Plan in October 2023, which was reviewed and ultimately approved by the Zoning Administrator on April 18, 2024. In reliance on that approval, Amazon began taking additional steps to develop the Project. In particular, Amazon:

- Engaged outside sound modelers to evaluate the noise impact of the Project;
- Performed environmental soil sampling, due diligence, and early-stage physical work;
- Performed tree felling on-site;
- Engaged a general contractor;

- Performed property management activities, including providing security at the Property and ensuring the Property was mowed, clean, and garbage-free;
- Continued to engage with design and engineering firms regarding construction of the Project;
- Executed a Letter of Authorization with Dominion Energy;
- Participated in biweekly meetings with Town officials, where Amazon addressed questions from the Town and coordinated with the Town on development activities;
- Began designing and procuring long lead-time equipment such as generators, HVAC systems, and steel; and
- Engaged with the Virginia Department of Environmental Quality and other State agencies regarding construction activities for the Project.

In all, Amazon incurred at least $3.5 million in expenses in reliance on the SUP and Site Plan approvals.

On June 14, 2024, a second civil action was filed by ten residents of Warrenton and an organization called "Citizens for Fauquier County." That action sought a writ of mandamus to require the Board of Zoning Appeals ("BZA") to intervene regarding the Site Plan approval (the "Site Plan Action"). That case is not yet set for trial.

On January 14, 2025, the parties to the ZOTA Action entered into a consent order whereby Amazon agreed generally to "maintain the status quo" with respect to development of the Project—specifically to "not 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." The consent order did not undo any of the steps Amazon had taken prior to January 14, 2025, nor did it preclude Amazon from seeking a determination of vested rights in the Property as of the date of the consent order.

In July 2025, the Council reversed course, adopting a second ZOTA to Articles 3, 9, and 12 of the Town of Warrenton Zoning Ordinance, which removed data centers as a permissible use within the Industrial District, thereby undoing the original ZOTA.[1] The Town's about-face put at risk Amazon's substantial investment in the Project, to say nothing of its $550 million-plus planned

[1] Tate Hewitt, *Town Council Votes to Ban Data Centers from Warrenton*, Fauquier Times (Jul. 8, 2025), https://www.fauquier.com/news/town-council-votes-to-ban-data-centers-from-warrenton/article_0f58d64e-f89e-4dbd-8825-c06e65f1a4b7.html.

future investment in construction, job creation, and technical skills education in Warrenton and Fauquier County.[2] This uncertainty compelled Amazon to forgo its immediate right to build in Warrenton and instead to lease data center space in another locality to fulfill its customers' needs—costing Amazon tens of millions more than the Warrenton location, and depriving Warrenton of substantial economic benefits.

To secure its investment-backed expectations, on July 25, 2025, Amazon applied to the Zoning Administrator for a determination of its vested rights in the Property (the "Determination Request"). In the Determination Request, Amazon detailed the efforts it had taken to develop the property, including considerable expenditures and time. Amazon argued that under Virginia Code § 15.2-2307, it substantially changed its position in good faith on a significant affirmative governmental act, and thus had obtained vested rights.

There was, and could be, no dispute that Amazon had incurred extensive obligations or substantial expenses in reliance on the ZOTA and SUP. However, the Zoning Administrator erroneously concluded that she could not make a vested rights determination due to the pendency of the ZOTA Action and the Site Plan Action. Amazon thus brings this appeal to the BZA pursuant to Virginia Code § 15.2-2311(A), for a determination that Amazon has vested rights in the Property.

III. Argument

The BZA has the power to hear Amazon's appeal of the Zoning Administrator's decision. Va. Code § 15.2-2311. "Whether a landowner has acquired a vested right in property is a question of law." *Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566, 581 (2019). The BZA should reverse the conclusion of the Zoning Administrator and declare that Amazon has vested rights under both Virginia Code §§ 15.2-2307(A) and 15.2-2311(C).

A. Amazon Has Vested Rights Under Virginia Code § 15.2-2307(A).

Under Virginia Code § 15.2-2307(A), a landowner "shall" be deemed to have vested rights in a land use that "shall not be affected by a subsequent amendment to a zoning ordinance when the landowner:

[2] *See* Town of Warrenton Community Development Staff Analysis at B-20 (the "proposal invests approximately $550,000,000"); B-26 (detailing employment opportunities and programs for local schools that will be available as part of the Project), https://mccmeetingspublic.blob.core.usgovcloudapi.net/warrntonva-meet-ffcaa83e9b3a4963a8f97c5f54f4ed09/ITEM-Attachment-001-1f79b33c886b4ce89145bdfb295ca6f1.pdf.

> (i) obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing the 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."

Va. Code § 15.2-2307(A) (line breaks added). Each of those elements is met here. *See Purcellville W., LLC, v. Bd. of Supervisors of Loudoun Cnty*., 75 Va. Cir. 284 (2008).

First, Amazon is the beneficiary of multiple significant government acts under § 15.2-2307(A)(i) and § 15.2-2307(B), including but not limited to the following:

- The Council engaged in a significant affirmative governmental act under (B)(iii) when it granted an SUP to Amazon, which expressly recognized that a data center was to be built on the Property.

- The Zoning Administrator engaged in a significant affirmative governmental act under (B)(vi) when she, as the designated agent of the Council, approved Amazon's final Site Plan. That written Site Plan approval again recognized no fewer than 19 times that the Property was to be used for a data center.

- The Zoning Administrator engaged in a significant affirmative governmental act under (B)(vii) when she approved Amazon's Site Plan, which specified that Amazon was permitted to build a data center on the Property.

This issue is not in serious dispute. Indeed, the Zoning Administrator's vested rights determination itself recognized that the Council had engaged in significant affirmative governmental acts by approving Amazon's SUP. Further, while not specifically addressed by the Zoning Administrator's vested rights determination, the Site Plan approval also is independently a significant affirmative governmental act in multiple respects, as Virginia Code §15.2307(B) expressly provides that "the designated agent[']s approval of] a final subdivision plat, site plan or plan of development for the landowner's property" constitutes a significant governmental act, as does any other "written order, requirement, decision or determination" regarding the same. Va. Code §§ 15.2-307(B)(vi)-(vii).

Second, pursuant to § 15.2-2307(A)(iii), Amazon incurred extensive obligations and substantial expenses, totaling at least $3.5 million not including the hundreds or thousands of hours Amazon personnel invested, in diligent pursuit of the Project in reliance on the foregoing affirmative governmental acts. As summarized in part above, these obligations and expenditures

included engaging sound modelers to evaluate the noise impact of the Project, engaging with state and local officials regarding the Project, performing environmental soil-sampling and due diligence, felling trees, contracting with a general contractor, performing property management activities, engaging design and engineering firms, executing a letter of agreement with Dominion Energy, participating in biweekly coordination with Town officials, and designing and procuring long lead-time equipment. These expenditures were both substantial and performed in diligent pursuit of the Project—Amazon would not have made any of these commitments or expenditures absent the SUP and Site Plan approval.

Third, Amazon relied in good faith on the significant affirmative governmental acts. That reliance was objectively reasonable: Amazon proceeded only after the Council granted an SUP and the Zoning Administrator approved a Site Plan, precisely the sorts of governmental actions that § 15.2-2307(B) deems sufficient to support vested rights. Amazon moreover coordinated with Town officials and community members, including by, as discussed above, agreeing to bury power lines, to conduct sound testing, and to make architectural changes. This demonstrates Amazon's transparent, good-faith pursuit of the approved Project, in material reliance on governmental actions. Indeed, Amazon's expenditures exceeding $3.5 million and ongoing project advancement demonstrate a non-speculative, bona fide commitment to build in reliance on the SUP and Site Plan—precisely what Virginia's vested-rights doctrine is designed to protect.

Accordingly, Amazon's right to develop a data center on the Property has vested pursuant to Virginia Code § 15.2-2307(A).

B. <u>The Zoning Administrator Erred by Declining to Recognize Amazon's Vested Rights Merely Because There Were Pending Lawsuits.</u>

Although the Zoning Administrator recognized that the Town had engaged in significant affirmative governmental acts, she took the position that Amazon could not have relied on those acts in good faith because the SUP and Site Plan were both challenged in court. This conclusion rested on three flawed assumptions: that Amazon's rights could not have vested prior to filing of the ZOTA Action; that the mere filing of the ZOTA Action precluded a vesting of Amazon's rights; and that the consent order precluded Amazon from seeking a determination of vested rights. Each of those assumptions is contrary to the record and to the applicable law. Worse, adopting the Zoning Administrator's conclusion would endorse a type of heckler's veto where the mere filing of a lawsuit, no matter how frivolous or nakedly obstructionist, would forestall important and appropriate property development, and thereby frustrate the very purpose of the vested rights laws. These errors, independently and collectively, require reversal of the Zoning Administrator's decision.

1. *Amazon's Rights Vested Before the ZOTA Action Was Filed.*

The Zoning Administrator concluded that the ZOTA Action put Amazon's vested rights in limbo. This assumes that Amazon's rights could not have vested before the ZOTA Action was served. That is incorrect. The Town's first relevant significant affirmative governmental act was the approval of Amazon's SUP on February 14, 2023, and the ZOTA Action was not filed until March 16, 2023. In the intervening period, Amazon performed tree felling on the site, contracted with engineering and construction firms, performed environmental due diligence on the site, prepared its Site Plan submission, and engaged extensively with the Town, the State, and other public and private partners on the development of the Project.

Accordingly, even if the filing of the ZOTA Action could have cut off Amazon's ability to rely in good faith on the SUP approval (which it could not, as explained below), that is irrelevant as Amazon's rights in the Property had already vested *before* filing of the ZOTA Action. The Zoning Administrator therefore should have declared Amazon's rights in the Property to have vested regardless of whatever effect intervening litigation has on a party's vested rights.

2. *The Mere Filing of the ZOTA Action Did Not Cut Off the Vesting of Amazon's Rights in the Property.*

The Zoning Administrator was also wrong in her assumption that the mere filing of litigation cuts off a landowner's ability to rely in good faith on previously-taken governmental action and in so doing to vest its rights in the property.

a. A Landowner May Rely on Significant Governmental Acts that Are "In Effect," Whether or Not They Have Been Challenged.

The plain language of the vested rights statute makes clear that subsequent litigation is irrelevant to the vested rights determination. Section 15.2-2307(A) speaks only to whether "a significant affirmative governmental act" "remains in effect" at the time it is relied on. Accordingly, the only requirement with respect to the status of the governmental act is that it "remains in effect" while the property owner incurs expense. That is true here—when the Zoning Administrator ruled (and today), the ZOTA, the SUP, and the Site Plan approval all "remain[] in effect."

To be sure, the General Assembly could have chosen to exclude significant affirmative governmental actions that have been *challenged*—whatever the merits of the challenge—from serving as predicates for vested rights. Or the General Assembly could have otherwise qualified the requirement that the affirmative government act be in effect to permit the type of considerations the Zoning Administrator took into account here. *Cf., e.g.*, Va. Code § 2.2-4362 (mere filing of a bid protest precludes "further action to award the contract"). But it did not, and that choice should

be assumed to have been deliberate. *See Jackson v. Fidelity & Deposit Co. of Maryland*, 269 Va. 303, 313 (2005) ("Courts cannot add language to the statute that the General Assembly has not seen fit to include.") (internal quotations omitted). The Zoning Administrator disregarded the plain text of the statute and instead added a qualification not present in the law: the significant governmental act must be in effect *and not subject to legal challenge*. As the Supreme Court of Virginia has stated, "[w]hen the language of a statute is unambiguous, we are bound by the plain meaning of that language." *Bd. of Supervisors v. Rhoads*, 294 Va. 43, 49 (2017). The Board thus can, and the Zoning Administrator should have, resolve this issue based solely on the text of § 15.2-2307(A).

In addition to being contrary to the plain text of the governing statute, the rule announced below is not administrable and will have deleterious effects on land use policy. In virtually no context is the mere filing of a lawsuit sufficient to interfere with another party's rights. In fact, Virginia Code §8.01-189 is expressly to the contrary: "The 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," which the ZOTA Action is, "shall not be sufficient grounds for the granting of any injunction." That is because a complaint is merely an allegation, and its existence does not establish or even suggest the plaintiff's entitlement to relief. To the contrary, anyone can file a lawsuit for virtually any reason. Thus, the mere fact that a lawsuit had been filed is not a basis to conclude that Amazon's subsequent investments were not made in good faith reliance.[3]

The Zoning Administrator's reliance on the mere filing of a lawsuit also conflicts with the "presumption of regularity." Virginia courts, like all federal and state courts in this country, operate from a presumption that "public officials have acted correctly." *See Hladys v. Commonwealth*, 235 Va. 145, 148 (1988); *accord, e.g., Robertson v. Commonwealth*, 12 Va. App. 854, 856–57 (1991) ("In the absence of clear evidence to the contrary, courts may presume that public officers have properly discharged their official duties."); *Smith v. Commonwealth*, 219 Va. 554, 559 (1978); *Murdock v. Nelms*, 212 Va. 639, 641–42 (1972). The Zoning Administrator, though, flipped that presumption on its head: she presumed that, because the ZOTA and Site Plan have been challenged in court, each is presumptively invalid unless and until a court concludes otherwise.

[3] At best, a finding that the ZOTA Action meant that subsequent investments could not have been made in good faith would have to be based on a determination that Amazon did so solely or primarily to lock in rights it knew or expected it would not have when the litigation concludes. But the record here does not support such a conclusion. To the contrary, the record shows that Amazon has for several years worked diligently towards the development of the data center.

The Zoning Administrator, in short, fashioned a new rule out of whole cloth—that investing in a property while a lawsuit is pending cannot be done in good faith, and thus the lawsuit per se makes vested rights inapplicable. The statute says no such thing.

b. The Zoning Administrator's Decision Contravenes the Purpose of the Vested Rights Statute.

Beyond the statute's plain text, the Zoning Administrator's decision also contravened its manifest purpose. The Legislature enacted the vested rights laws to enable landowners to receive clear, expeditious declarations of their rights when those rights are being called into question, to facilitate investment and development. Landowners, in the ordinary course, do not seek vested rights determinations when their rights are clear and free from legal or political challenge; rather, the statute is invoked when third parties or governmental entities question or seek to claw back the governmental action the landowner relied on to develop its property. *See Town of Leesburg v. Long Lane Assocs. Ltd. P'ship*, 284 Va. 127, 134 (2012) ("The purpose of Code § 15.2–2307 is to provide 'for the vesting of a right to a permissible use of property against any future attempt to make the use impermissible by amendment of the zoning ordinance ....'" (quoting *Goyonaga v. Bd. of Zoning Appeals*, 275 Va. 232, 244 (2008) (emphasis omitted)).

Given that, the possibility a zoning law may later be revoked or challenged in court does not and cannot affect a landowner's vested rights. In *Rhoads*, 294 Va. 43, the Supreme Court of Virginia ruled that a sister statue to § 15.2-2307(A), Virginia Code § 15.2-2311(C), "manifestly creates a legislatively-mandated limited exception to the judicially-created general principle that a building permit issued in violation of applicable zoning ordinances is void." *Id.* at 52. That is because "Code § 15.2-2311(C)... provide[s] for the potential vesting of a right to use property in a manner that 'otherwise would not have been allowed.'" *Id.* Accordingly, the Supreme Court held that "[t]he circuit court did not err in rejecting the Board's claim that the Certificate was *void ab initio* because the Certificate granted a right to use property in a manner that otherwise would not have been allowed under the Zoning Ordinance." *Id.*

The Court of Appeals recently reaffirmed *Rhoads*: "[*Rhoads*] stands for the proposition that a building permit is an order, requirement, decision or determination for purposes of Code § 15.2-2311(C) even where it is issued in violation of a local zoning ordinance." *Bd. of Supervisors v. Bowman*, 2025 WL 1033993, at *6 (Va. Ct. App. Apr. 8, 2025). The Court of Appeals also discussed good faith reliance in the context of § 15.2-2311(C): A "property owner's 'good faith reliance' is measured by whether he materially changes his position in an honest dependence on the legality of the zoning action and without intent to defraud, deceive or to obtain an unconscionable advantage." *Id.* at *9.

The reasoning of *Rhoads* and *Bowman* applies with equal force to § 15.2-2307(A). The Supreme Court in *Rhoads* characterized § 15.2-2311(C) as a "remedial statute" because its purpose was "to provide relief and protection to property owners who detrimentally rely in good faith upon erroneous zoning determinations and who would otherwise suffer loss because of their reliance upon the zoning administrator's error." 294 Va. at 51. Like § 15.2-2311(C), § 15.2-2307(A) is remedial in nature. As discussed above, the purpose of § 15.2-2307(A) is "to provide 'for the vesting of a right to a permissible use of property against any future attempt to make the use impermissible by amendment of the zoning ordinance… .'" *Town of Leesburg*, 284 Va. at 134 (emphasis omitted). It therefore serves the same function recognized in *Rhoads*: it "provide[s] relief and protection to property owners who detrimentally rely in good faith[,]" *Rhoads*, 294 Va. at 51, upon significant governmental acts, against "any future attempt to make the use impermissible by amendment of the zoning ordinance,'" *Town of Leesburg*, 284 Va. at 134. Remedial statutes are "liberally construed so that the purpose intended may be accomplished." *Rhoads*, 294 Va. at 51 (internal quotation omitted). Because § 15.2-2307 is remedial in nature, it must be liberally construed to protect Amazon's vested rights, even if the SUP or Site Plan were *void ab initio*.

Likewise, "good faith" in § 15.2-2307(A) must be understood in precisely the same way the Court of Appeals interpreted it in *Bowman*: a "material[] change[] [in] position in an honest dependence on the legality of the zoning action and without intent to defraud, deceive or to obtain an unconscionable advantage." 2025 WL 1033993 at *9. Because § 15.2-2307(A) does not define "good faith," established interpretive principles require looking to related provisions. The most obvious place from which to glean the meaning of good faith is § 15.2-2307's sister zoning statute, § 15.2-2311(C), because "when a term is used in different sections of a statute, we give it the same meaning in each instance unless there is a clear indication the General Assembly intended a different meaning." *Eberhardt v. Fairfax Cnty. Emps.' Ret. Sys. Bd. of Trs.*, 283 Va. 190, 195 (2012). And if that were not enough, Black's Law Dictionary, cited in *Bowman*, defines good faith as a "state of mind consisting [of] honesty in belief or purpose" or the "absence of the intent to defraud or to seek unconscionable advantage." *Good Faith*, *Black's Law Dictionary* (11th ed. 2019). There is no principled basis to assign "good faith" in § 15.2-2307(A) anything other than that settled meaning. Thus, "good faith" in § 15.2-2307 and § 15.2-2311(C) must be construed identically.

The record is clear and undisputed that Amazon honestly and in good faith relied on Warrenton's actions permitting the development of a data center. There is no doubt that Amazon "materially change[d]" its "position in an honest dependence on the legality of the zoning action and without intent to defraud, deceive or to obtain an unconscionable advantage." *Bowman*, 2025 WL 1033993, at *9; *see Robertson,* 12 Va. App. at 856–57 (applying presumption of regularity "that public officers have properly discharged their official duties.").

3. *The Consent Order Did not Deprive the Zoning Administrator of the Ability to Declare Vested Rights.*

To the extent the Zoning Administrator's decision can be read as relying on the entry of the consent order in the ZOTA Action as cutting off the ability to declare vested rights, that was also incorrect. The purpose of the consent order was to maintain status quo *as it existed on the date it was entered*. It did not put the parties back to a status quo *ex ante*; it merely locked the parties in to the status quo as it existed on January 14, 2025. Thus, if Amazon had vested rights as of January 14, 2025, the Zoning Administrator was free—indeed, required—to say so.

Nor did the consent order bar Amazon from seeking a vested rights determination, as evidenced by the fact that the ZOTA Action plaintiffs did not bring a motion to enforce the consent order. That order simply required Amazon to agree 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." In other words, Amazon was limited from taking additional steps that would further entrench its vested rights, but it was not barred from seeking a determination of its rights.

4. *Accepting the Zoning Administrator's Logic Would Create a Heckler's Veto.*

Lastly, the Zoning Administrator's ruling endorses a heckler's veto, allowing anyone opposing a zoning decision to displace the vested rights scheme simply by filing suit. Prior to enactment of the vested rights laws, landowners bore the risk of a subsequent change in zoning. A municipality could "downzone" or otherwise change the zoning laws and undercut a landowners' investment-backed expectations in its land. The legislature adopted Section 15.2-2307 to protect landowners against such municipal whims. The Zoning Administrator's application of the statute, however, would create a backdoor to delay or undermine the recognition of vested rights. Under the reasoning below, those opposed to a proposed land use need only file a lawsuit, regardless of its merit, to buy itself months or (as is the case here) years to obtain a change in the relevant zoning laws. In the interim, any development undertaken by the landowner would be at its own risk. That cannot be. For one, that deprives the developer of the benefit of the statute. *See Town of Leesburg*, 284 Va. at 134 ("The purpose of Code § 15.2–2307 is to provide 'for the vesting of a right to a permissible use of property against any future attempt to make the use impermissible by amendment of the zoning ordinance . . . .'")(emphasis omitted). Further, the Zoning Administrator's theory will create an incentive for frivolous litigation. Opponents of land development will file lawsuits not in the hope or expectation of winning, but to buy time for a change in views in the local governing board—during which time, development will be at the developer's substantial risk.

Accordingly, the BZA should not countenance the Zoning Administrator's flawed theory that the mere filing of a lawsuit can cut off the vesting of rights. That theory is contrary to the statute, to principles of statutory construction and administrative decision making, and would create a foolproof method opponents of development could use to halt the vesting of rights.

C. Amazon has Vested Rights Under Virginia Code § 15.2-2311(C).

The Board should rule in Amazon's favor for an entirely independent and separate reason. Even if the Zoning Administrator was correct that Amazon's rights were not yet vested under Virginia Code § 15.2-2307(A), the Zoning Administrator still erred by failing to recognize Amazon's vested rights under Virginia Code § 15.2-2311(C). That section provides:

> In no event shall a written order, requirement, decision or determination made by the zoning administrator or other administrative officer be subject to change, modification or reversal by any zoning administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision or determination where the person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer … .

Those elements are met here.

First, the Zoning Administrator issued a written decision and/or determination on Amazon's Site Plan. As the Zoning Administrator herself acknowledged in the Zoning Determination, Amazon "obtained approval of a Site Development Plan SDP-23-6 *by the Town of Warrenton Zoning Administrator*." Nor could she very well deny the fact: the Zoning Administrator sent Amazon a document, signed by her, on April 18, 2024, that was titled "Site Plan Approval." This written approval with the official imprimatur of the Zoning Administrator may be characterized as a "decision" or a "determination"; in either case this writing meets the requirements of the statute. *See Determination, Black's Law Dictionary* (12th ed. 2024) ("[t]he act of deciding something officially; esp., a final decision by a court or administrative agency."); *Decision*, *Merriam-Webster Online Dictionary* ("a determination arrived at after consideration."); *Arogas , Inc. v. Frederick Cnty. Bd. of Zoning Appeals*, 280 Va. 221, 229 (2010) (failure to approve site plan was a "determination."); *cf. Ripol v. Westmoreland Cnty. Indus. Dev. Auth.*, 82 Va. Cir. 69, at *10 (2010) (a zoning administrator's statement that a tower was a "by-right" permitted use was "a decision" within the meaning of § 15.2-2311(C)). The Site Plan approval was thus a "decision or determination made by the zoning administrator[.]" § 15.2-2311(C).

Second, more than sixty days have elapsed from the date of the written decision or determination. The Site Plan was approved 585 days ago, on April 18, 2024.

Third, Amazon materially changed its position in good faith reliance on the Zoning Administrator's Site Plan approval. As discussed above, in the context of § 15.2-2311(C), a "property owner's 'good faith reliance' is measured by whether he materially changes his position in an honest dependence on the legality of the zoning action and without intent to defraud, deceive or to obtain an unconscionable advantage." *Bowman*, 2025 WL 1033993, at *9. Amazon has indeed changed its position by making the substantial expenditures and incurring the obligations set out in the determination request and herein. Finally, Amazon did not intend to defraud, deceive, or obtain an unconscionable advantage by relying in good faith on the Site Plan approval.

Here too, the filing of the ZOTA and Site Plan Action have no impact on Amazon's vested rights. *Rhoads* and *Bowman* both considered § 15.2-2311(C) and found that "Code § 15.2-2311(C) manifestly creates a legislatively-mandated limited exception to the judicially-created general principle that a building permit issued in violation of applicable zoning ordinances is void." *Rhoads*, 294 Va. at 52; *see Bowman*, 2025 WL 1033993, at *6 ([*Rhoads*] "stands for the proposition that a building permit is an order, requirement, decision or determination for purposes of Code § 15.2-2311(C) even where it is issued in violation of a local zoning ordinance.").

Accordingly, because Amazon materially changed its position in good faith reliance on the Zoning Administrator's Site Plan approval, and because more than sixty days has passed, Amazon has vested rights under § 15.2-2311(C).

IV. Conclusion

For the reasons set forth herein, Amazon has been grieved by the Zoning Determination. Amazon asks the BZA to affirm that Amazon has vested rights in the development of the Property as a data center.

Please schedule this appeal for presentation to the BZA. Amazon respectfully requests the right to present additional argument and evidence to the BZA at the time this matter is scheduled for consideration.

Sincerely,

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