

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

OAK VALLEY HOMEOWNERS
ASSOCIATION, INC.

IAN C. MIRKES

GABRIELLE J. PYLE

MICHAEL DONEGAN

CHRISTOPHER D. WALL

JEFFREY DELYLE JENSEN

CAMERON ROHRER

JOHN B. BRADSHAW

STEPHANIE C. CHARTRAND

JOHN C. HERMANSEN
Trustee of the John C. Hermansen
Revocable Living Trust

JOSE R. MEDINA
Trustee of the Medina Living Trust

Plaintiffs,

v.

PRINCE WILLIAM COUNTY
BOARD OF COUNTY SUPERVISORS

SERVE:

Michelle R. Robl, Esq.
Prince William County Attorney
Office of the County Attorney
1 County Complex Ct., Ste. 240
Prince William, VA 22192

Defendant.

CIVIL CASE NO. CL22-10052

COMPLAINT FOR DECLARATORY RULING AND INJUNCTIVE RELIEF

Oak Valley Homeowners Association, Inc., Ian C. Mirkes, Gabrielle J. Pyle, Michael Donegan, Christopher D. Wall, Jeffrey Delyle Jensen, Cameron Rohrer, John B. Bradshaw, Stephanie C. Chartrand, John C. Hermansen, Trustee of the John C. Hermansen Revocable Living Trust, and Jose R. Medina, Trustee of the Medina Living Trust (collectively “Plaintiffs”) by counsel, hereby request that this Court enter a Declaratory Judgment that the November 2, 2022 decision of the Prince William County Board Of County Supervisors (“County Board” or “Board”) adopting Comprehensive Plan Amendment #CPA2021-00004, PW Digital Gateway (“CPA” or “Digital Gateway CPA”) was arbitrary and capricious and/or void *ab initio*. Plaintiffs also move this Court for entry of a Permanent Injunction, enjoining the Board from taking any further action to implement the CPA, or action based upon the CPA, including but not limited to approving any of the pending rezoning applications for approval to construct data centers in the CPA Study Area or purchasing any of the areas designated as parkland in the CPA. Plaintiffs also request that this Court grant such other relief as it may deem just and proper. In support thereof, the following is shown:

THE PARTIES

1. Plaintiff OAK VALLEY HOMEOWNERS ASSOCIATION, INC., (“Oak Valley” or “Oak Valley Community”), a Virginia non-stock corporation, is a 254-member homeowners association. Oak Valley owns several parcels of land, including the property at 13513 ACCORD COURT, GAINESVILLE, VA 20155 (“Oak Valley Property”). The Oak Valley Property is zoned SR1-C. The Oak Valley Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-09-6537. It is located approximately 1,370 ft from the western boundary of the CPA Study Area and is in the Rural Crescent.

2. Plaintiff IAN C. MIRKES owns property and resides at 13510 ACCORD COURT, GAINESVILLE, VA 20155 (“Mirkes Property”). The Mirkes Property is zoned SR1-C. The Mirkes Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-09-5557. Mr. Mirkes pays real estate taxes to Prince William County. The Mirkes Property is approximately 1,482 ft from the western boundary of the CPA Study Area and is in the Rural Crescent.

3. Plaintiff GABRIELLE J. PYLE owns property and resides at 5417 ANCESTRY COURT, GAINESVILLE, VA 20155 (“Pyle Property”). The Pyle Property is zoned SR1-C. The Pyle Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-09-4892. Ms. Pyle pays real estate taxes to Prince William County. The Pyle Property is approximately 1,650 ft from the western boundary of the CPA Study Area and is in the Rural Crescent.

4. Plaintiff MICHAEL DONEGAN owns property and resides at 5405 ANCESTRY COURT, GAINESVILLE, VA 20155 (“Donegan Property”). The Donegan Property is zoned SR1-C. The Donegan Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-00-5027. Mr. Donegan pays real estate taxes to Prince William County. The Donegan Property is approximately 1,820 ft from the western boundary of the CPA Study Area and is in the Rural Crescent.

5. Plaintiff CHRISTOPHER D. WALL owns property and resides at 13516 HERITAGE FARMS DRIVE., GAINESVILLE, VA 20155 (“Wall Property”). The Wall Property is zoned SR1-C. The Wall Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-00-1762. Mr. Wall pays real estate taxes to Prince

William County. The Wall Property is approximately 2,315 ft from the western boundary of the CPA Study Area and is in the Rural Crescent.

6. Plaintiff JOSE R. MEDINA is Trustee of the MEDINA LIVING TRUST. The Trust holds title to Mr. Medina's residence at 4610 SUDLEY ROAD, CATHARPIN, VA 20143 ("Medina Property"). The Medina Property is zoned A-1 and is on well and septic. The Medina Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-65-0558. The Trust pays real estate taxes to Prince William County. The Medina Property abuts the northern boundary of the CPA Study Area and is in the Rural Crescent.

7. Plaintiff JEFFREY DELYLE JENSEN owns property and resides at 4580 SUDLEY ROAD, GAINESVILLE, VA 20155 ("Jensen Property"). The Jensen Property is zoned A-1 and is on well and septic. The Jensen Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-55-1569. Mr. Jensen pays real estate taxes to Prince William County. The Jensen Property abuts the northern boundary of the CPA Study Area and is in the Rural Crescent.

8. Plaintiff CAMERON ROHRER owns property and resides at 4511 OLD FIELD DRIVE, GAINESVILLE, VA 20155 ("Rohrer Property"). The Rohrer Property is zoned A-1 and is on well and septic. The Rohrer Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7499-45-6165. Mr. Rohrer pays real estate taxes to Prince William County. The Rohrer Property abuts the northern boundary of the CPA Study Area and is in the Rural Crescent.

9. Plaintiff JOHN B. BRADSHAW owns property and resides at 12010 BOBWHITE DRIVE, CATHARPIN, VA 20143 ("Bradshaw Property"). The Bradshaw Property is zoned A-1 and is on well and septic. The Bradshaw Property is designated in the real estate tax records of

Prince William County, Virginia as GPIN 7499-90-3329. Mr. Bradshaw pays real estate taxes to Prince William County. The Bradshaw Property abuts the northern boundary of the CPA Study Area and is in the Rural Crescent.

10. Plaintiff JOHN C. HERMANSEN is Trustee of the JOHN C. HERMANSEN REVOCABLE LIVING TRUST. The Trust holds title to Mr. Hermansen's residence at 12012 ROBIN DRIVE, CATHARPIN, VA 20143 ("Hermansen Property"). The Hermansen Property is zoned A-1 and is on well and septic. The Hermansen Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7599-10-0562. The Trust pays real estate taxes to Prince William County. The Hermansen Property abuts the eastern boundary of the CPA Study Area and is in the Rural Crescent.

11. Plaintiff STEPHANIE C. CHARTRAND owns property and resides at 6598 ALDERWOOD WAY, GAINESVILLE, VA 20155 ("Chartrand Property"). The Chartrand Property is zoned PMR. The Chartrand Property is designated in the real estate tax records of Prince William County, Virginia as GPIN 7498-11-6075. Ms. Chartrand pays real estate taxes to Prince William County. The Chartrand Property is approximately 986 ft from the southwestern boundary of the CPA Study Area.

12. Defendant County Board is the duly constituted governing body for the County of Prince William, Commonwealth of Virginia.

JURISDICTION AND VENUE

13. This action is brought pursuant to Sections 8.01-184 *et seq.*, 8.01-620 of the Virginia Code. Venue is proper pursuant to Section 8.01-257 *et seq.* of the Virginia Code, as all parties reside and/or conduct business in Prince William County, Virginia.

FACTS

The County's Simultaneous and Conflicting Planning Initiatives

14. At issue in this case is the improper adoption of the Digital Gateway CPA by the County Board on November 2, 2022 after a public hearing that lasted over 14 hours. It began at 7:30 pm on November 1, 2022 and concluded at 9:47 a.m. the following day (“November BOCS Hearing”). The purpose of the CPA was to pave the way for three then-pending zoning applications to build data centers comprising up to 27 million square feet on 1,650 acres of semi-rural and agricultural land that either adjoins or is in close proximity to Plaintiffs’ homes.

15. On information and belief, around the time of the November BOCS hearing, there were approximately 33 data centers located in Prince William County, with approximately 13 more in the zoning/construction process. Those existing data centers consist of buildings approximately 5 million square feet in size, built on approximately 523 acres of land. At the time of the November BOCS Hearing, the data centers built adjacent to residential districts were becoming problematic for County residents who live near them. The complaints center chiefly around the residents being subjected to round-the-clock noise caused by the 24/7 operation of the data centers.

The Digital Overlay District Zoning Ordinance/Comprehensive Plan Amendment Initiative and the Digital Gateway Comprehensive Plan Amendment

16. In 1998, the County Board created the Rural Area, also known as the “Rural Crescent.” It covers approximately 117,000 acres containing agricultural, open space, forestry, and large-lot residential land uses, as well as occasional small-scale convenience retail centers and community facilities. Among other purposes, the Rural Crescent has been used as a smart growth tool to protect the Occoquan Reservoir Watershed.

17. On May 17, 2016, by Ordinance No. 16-21, the County Board adopted a Zoning Ordinance Text Amendment (“ZTA”) creating the Data Center Opportunity Zone Overlay District (“Data Center Overlay District,” “Overlay District,” or “DCOZOD”).

18. Section 32-509.02 of the Prince William County Zoning Ordinance (“ZO”) provides that an Overlay District may be established by ordinance on “lands in proximity to high voltage transmission lines ... **and planned or zoned for office or industrial uses.**” (Emphasis added). The intent is to “attract and advance high-tech industrial development while limiting negative impacts to communities.” ZO §32-509.01. Under ZO §32-509.06, data centers are prohibited in agricultural, residential, and Planned Mixed Residential (“PMR”) districts, such as the Plaintiffs’ properties, as well as the B-2, B-3 and V zoning districts.

19. On May 18, 2021, by Resolution No. 21-327, the County Board initiated a Zoning Text Amendment (“ZTA”) to explore amending the Zoning Ordinance and the Comprehensive Plan with respect to the Overlay District.

20. County Staff’s scope of work set forth in Resolution No. 21-327 included: a market demand analysis to determine whether the existing Overlay District is adequate or whether to expand it, and the development of a methodology to identify potential parcels within the Overlay District that are suitable for data center development. Additionally, Staff was to consider economic impact and best practices; land use/infrastructure impacts, including impacts to environmental resources, and cultural resources, as well as impacts on tourism, viewsheds and National Parks. Resolution No. 21-237 directed Staff to undertake community outreach and develop design and sustainability guidelines. The Board appropriated \$120,000 for consultant services to complete the scope of work and the County hired a company named Stantec to perform the consulting work.

21. Also in May of 2021, Mary Ann Ghadban (“Ghadban” or “Applicant”), acting as agent for other property owners (“Applicant Group”), submitted a request for a Comprehensive Plan Amendment for approximately 800 acres of land. The June 2, 2021 receipt for the application fee indicates Applicant paid for a “Comp Plan Amendment Concurrent with REZ.”

22. In a letter in June of 2021, the Prince William County Planning Office (“Planning Office”) referred to Ghadban’s submission as the “PWC Digital Gateway CPA2021-00004” and explained that she could apply for an “out of turn amendment” because data centers are in a “targeted industry.”

23. On July 20, 2021, by Board Resolution No. 21-445, the Board accepted Ghadban’s application for PWC Digital Gateway CPA2021-00004 to initiate a change in the Long Range Land Use designation for approximately ±801.59 acres of the 27 parcels from Agricultural or Estate (AE) and Environmental Resource (ER) to Technology / Flex (TF) with a T-3 Transect. The parcels were grouped into four separate geographical areas located on both the east and west side of Pageland Lane, south of State Route 234 and north of State Route 29.

24. The Board Resolution, over the objection of Supervisors Vega, Lawson and Candland, expanded Ghadban’s original 800 acres to include “the entire corridor between Route 29 and Sudley Road.” The Board Resolution made no mention of Applicant’s concurrent rezoning.

25. Sometime in August of 2021, Staff drew the boundary line of the “Study Area” of the CPA to include approximately 197 parcels, comprising approximately 2,139 acres (“CPA Study Area”).

26. The CPA Study Area is adjacent to a mix of residential and agricultural uses to the west and north, including the properties of Plaintiffs Jensen, Medina, Rohrer, Oak Valley,

Mirkes, Donegan, Pyle, and Wall. To the east are residential areas including properties of Plaintiffs Bradshaw and Hermansen, and historic areas, including the Manassas National Battlefield Park. To the south is Plaintiff Chartrand's property and the Conway Robinson Memorial State Forest.

27. Some or all of the parcels in the CPA Study Area are located in the Rural Area (Rural Crescent) boundary, as well as the following Overlay Districts: Airport Safety, Domestic Fowl, 100-year flood Hazard, and Resources Protection. Additionally, some parcels are located in the Cemetery Preservation areas and the Silver Lake Dam Inundation zone.

28. The land in the CPA Study Area is primarily zoned A-1 Agricultural (minimum 10-acre parcels) with some of the land zoned SR-5, semi-rural residential.

29. The CPA Study Area has since become known as the Digital Gateway Corridor and, on information and belief, it is one of the largest (if not the largest) assemblage of acreage devoted to the data center industry in the country.

30. None of the CPA Study Area is located in an existing Data Center Overlay District. Moreover, none of the County Staff Reports connected with the Digital Gateway CPA mention the ongoing Digital Overlay District Comprehensive Plan/ZO planning effort. Nor does it appear that the Planning Office has attempted to coordinate efforts or even apply a consistent set of principles and strategies to evaluate the impacts of data centers and their proper placement within the County. This is so even though throughout the entire time at issue in this Complaint, the Planning Office has been undertaking both planning efforts simultaneously.

31. On or about September 3, 2021, Applicant and/or Applicant Group filed an Application for Long Range Map Changes, stating that they desired to be included "within the proposed amended Data Center Overlay District and upcoming amendments to the

Comprehensive Plan.” The September 3, 2021 Application did not mention a concurrent rezoning.

32. The September 3, 2021 Application requested that Applicant’s proposal be viewed comprehensively as part of the overall County planning policy with respect to data centers as part of the Data Center Overlay District Comprehensive Plan and Zoning Amendment initiative described above. Additionally, as part of the regular comprehensive plan amendment cycle (instead of the “out of turn” amendment cycle) the proposal would have been evaluated as part of the overall comprehensive plan review now in process, which is called “Pathway to 2040.”

33. However, almost immediately after the September 3, 2021 Application, in a November 2, 2021 letter titled “Submission of Post Initiation Materials for Comprehensive Plan Amendment (CPA #2021-00004),” Christopher Consultants (on behalf of Applicant) stated, “This Comprehensive Plan Amendment (CPA), by design and BOCS direction, is separate and distinct from the County’s Zoning Text Amendment (ZTA) of the Data Opportunity Zone Overlay District.” The November 2, 2021 Application did not mention a concurrent rezoning.

34. On November 10, 2021, Applicant received a letter from the Planning Office stating that her application was being forwarded to review agencies for comment, which were due on December 10. The letter did not state whether it was accepting the September 3, 2021 Application or the November 2, 2021 Application. The letter scheduled a post-submission meeting with the Applicant for December 16, 2021.

35. Also in November of 2021, Supervisor Peter Candland, who owns property in the CPA Study Area, became a member of the “Applicant Group” and, accordingly, recused himself from addressing the CPA issues on behalf of the residents of the Gainesville Magisterial District.

36. As a consequence of this recusal, residents of the Gainesville Magisterial District, including Plaintiffs, had no Supervisor on the Board to advocate for their concerns with regard to the Digital Gateway, which is entirely within the Gainesville Magisterial District.

37. On information and belief, Applicant participated in four planning reviews of the CPA Application, beginning with the one contemplated in the November 10, 2021 letter. These reviews consisted of meetings with the Staff and were followed-up with suggested language and revisions to the CPA from Applicant.

38. The County web portal lists CPA2021-00004 as a “Comp Plan Amendment (without Rezoning).” However, by giving Applicant a “seat at the table” to monitor and influence the Comprehensive Plan process and tailor it to three specific rezoning applications, Ghadban was treated as if she was filing for the Comprehensive Plan amendment concurrently with a rezoning application.

39. On information and belief, consistently throughout the planning process prior to the Prince William County Planning Commission (“Planning Commission” or “PC”) CPA hearing, County Staff referred to Ghadban as the “Applicant.”

The Adoption of the Digital Gateway CPA

40. On July 7, 2022, the County made available to the public a first draft of the Digital Gateway CPA. After a Planning Commission work session on August 15, 2022, the County publicly released the second draft plan.

41. On September 14-15, 2022, the Planning Commission held a hearing on the Digital Gateway CPA. Apparently, the packet of information the Planning Commission received for the meeting included a letter dated September 9, 2022, submitted to the Chair of the Planning

Commission by counsel for QTS Data Centers (“QTS”) and Compass Data Centers (“Compass”) (“Developers’ September 9 Letter”).

42. QTS and Compass (collectively “Developers”) are contract purchasers of approximately 1,650 acres of land within the 2,133-acre CPA Study Area.

43. On information and belief, the County did not post the Developers’ September 9 Letter on any County website, nor did the County otherwise make the document publicly available prior to the September 14, 2022 hearing. Moreover, the County failed to distribute a copy to the public at the hearing. The September 9 Letter indicated the Developers previously filed with the County three rezoning applications, but the County delayed processing them because they were waiting for the Board’s adoption of the CPA. The September 9 Letter provided, in redline form, precisely how the Developers wanted the CPA language changed.

44. On information and belief, during the hearing, no Planning Commissioner mentioned the existence of the September 9 Letter until the morning of September 15, 2022, immediately before the vote was taken.

45. Nonetheless, after an all-night hearing ending in the early morning of September 15, 2022, in its Resolution No. 22-085, the Planning Commission recommended approval of the CPA. In its recommendation, by a vote of 4-3-1, the Planning Commission incorporated verbatim the language and changes as submitted in Exhibit A to the Developers’ September 9 Letter.¹

¹ Specifically, the resolution stated: “NOW, THEREFORE, BE IT RESOLVED that the Prince William County Planning Commission does hereby recommend that the Board of County Supervisors adopt Comprehensive Plan Amendment #CPA2021-00004, PW Digital Gateway to include the following recommendations:

1. Noise is adequately reduced and/or mitigated; and
2. Proper measures are taken to address any potential negative environmental issues;
and
3. Planning Staff include the revisions and clarifications requested by the applicants in Exhibit A attached to the letter to the Planning Commission dated September 9, 2022.

46. During the Planning Commission meeting, a public outcry arose regarding the fact that the Applicant Group members were permitted to speak as individuals during the public comment time. After the meeting concluded, a further public outcry occurred with respect to the Planning Commission's consideration, and immediate adoption, of the Exhibit A recommendations in the September 9 Developer Letter, which many of the Commissioners stated they had not received.

47. After the Planning Commission hearing and before the November 1-2, 2022 BOCS Hearing, the County attempted to convince the public that the Applicant was not an Applicant, had never been an Applicant, that the County was fully in charge of the CPA, and that the County was actually the Applicant.

48. Notices advertising the November BOCS Hearing on the CPA were published in the Washington Post on October 18 and October 25, 2022. Neither notice mentioned that the purpose of the CPA was to change the planning designations in order to allow the development of 1,650 acres of data centers in the CPA Study Area. (Exhibit 1).

49. On November 1, 2022, the County Board commenced the public hearing at 7:30 p.m. and concluded on November 2, past the opening of business on that day.²

50. By Resolution No. 22-508, on November 2, 2022 the Board adopted the Digital Gateway CPA over the objections of the two Supervisors, Lawson and Vega, who had originally objected to the July 2021 Resolution.

ATTACHMENT: #CPA2021-00004, PW Digital Gateway Plan v.2 published - August 15, 2022. Exhibit A letter to the Planning Commission dated September 9, 2022."

² Notwithstanding the fact that the public hearing started at 7:30 pm. on November 1 and continued for approximately 14 hours, the Board's official resolution approving the CPA erroneously states that it was adopted on November 1, 2022. In fact, it was adopted on the next business day -- November 2, 2022 -- after the conclusion of the public hearing.

Significant Studies and Recommendations Relevant to the CPA That the Board Ignored

51. In October of 2022, prior to the November BOCS Hearing on the Digital Gateway CPA at issue here, the Data Center Opportunity Zoning Overlay District (“DCOZOD”) consultant, Stantec, delivered its findings. The County posted the report on the County’s Data Center Overlay webpage (“Stantec Report”). Stantec recommended, *inter alia*, that “No additional expansion of DCOZOD [be made] at this time” and that “[t]he expansion could be reassessed in five years to determine if the market is still trending in the same direction or if demand lessens.” (Exhibit 2, p. 2).

52. Alternatively, the Stantec Report recommended to “[p]ursue expanding the DCOZOD to [areas] identified through the suitability analysis which are directly adjacent to the existing boundary [of the DCOZOD].” The Report noted, “[t]he intent of this option is to keep data center development consolidated within the County, potentially lessening the impact of new infrastructure on communities.”

53. The purpose of the Stantec Report was not only to study the DCOZOD. Rather, as noted in the Report, “[a] key outcome of the study was understanding areas of the County that are suitable for additional data center development based on accessibility to existing infrastructure, current and future land use policy, physical characteristics and compatibility of adjacent and uses.” (Exhibit 2, p. 1).

54. Based on this analysis, the Stantec Report identified sites within 0.5 miles of the Manassas Battlefield as being “unsuitable” for data center development. (Exhibit 2, p. 7). With respect to land adjacent to the Battlefield, the Report also stated that “proximity to Manassas Battlefield is not favorable and therefore this area is not deemed suitable for inclusion in the overlay, because additional site-specific mitigation may be needed.” (*Id.*, p. 8).

55. Additionally, the suggested language of the new Overlay District Zoning Ordinance amendment posted on the County’s website retains the current version of ZO § 32-509.06 so that data centers will remain banned in agricultural, residential, and PMR districts, such as the Digital Gateway CPA area.

56. The Board adopted the CPA without regard to the Stantec Report, even though it is relying on the Stantec Report findings for the purpose of the Data Center Overlay Comprehensive Plan initiative and has posted them on its website.

57. The Fairfax County Water Authority (“Fairfax Water”) manages the Occoquan Reservoir, which provides drinking water for more than 800,000 people living throughout Northern Virginia. Prince William has the largest portion of the land area within the Occoquan Watershed; forty percent lies within its jurisdiction. (Exhibit 3, pp. 1, 2).

58. On March 21, 2022, Fairfax Water wrote to the County Board expressing its concern that the Digital Gateway data centers would have a significant adverse impact on the regional water supply. (Exhibit 3).

59. Specifically, Fairfax Water stated that the Occoquan Reservoir “faces challenges from threats such as increasing trends in concentration of sodium and other salt-related constituents, which are related to the impervious area, and **cooling blowdown from industrial uses such as water-cooled data centers.**” (Exhibit 3, p.3) (Emphasis added). It requested that the County convene the Occoquan Basin Policy Board and oversee a comprehensive study on the impacts that the proposed data center development would have on the Occoquan Watershed (“Water Study”).

60. In response to the Fairfax Water letter, on August 2, 2022, the Board, in Resolution. No. 22-397 (Exhibit 4), requested that the Northern Virginia Regional Commission conduct the

requested Water Study to assess the “potential changes in loading of nutrients and sediment associated with development in the Occoquan Watershed to include the Comprehensive Plan Update Pathway to 2040, revisions to the Data Center Opportunity Zone Overlay District, and the proposed Prince William Digital Gateway Comprehensive Plan Amendment.” (Exhibit 4). However, the Board refused to adopt a motion introduced by Supervisor Lawson, which would have delayed consideration of the Digital Gateway CPA until after the completion of the Water Study and ultimately approved the CPA in the complete absence of any results from the Water Study.

61. On August 29, 2022, the PWC Watershed Management Branch “(WMB”) submitted its comments on the PWC Digital Gateway. (Exhibit 5). The WMB recommended that “the Comprehensive Plan remain unchanged” (*Id.*, p. 1). In other words, the WMB’s recommendation were based upon on its conclusion that approval of the Digital Gateway CPA would result in

[The] loss of extensive tracts of forest land, dramatic increases in impervious area, impact to numerous intermittent and perennial streams, steep slopes with highly erodible soils, wildlife habitat (including potential impacts to habitat for rare, threatened and endangered species) and potential impacts to wetlands.”

(*Id.*, p. 1).

62. The WMB Comments further stated that:

The proposed land use change would bring about extensive and incompatible changes both within the proposed CPA and **all** abutting land uses. The development of existing data centers has demonstrated that extensive mass grading and the nearly wholesale clearing and flattening of large parcels is the norm. Replacement of forests and fields with numerous buildings, each the size of several football fields, will greatly alter the community appearance.

(Exhibit 5, p. 2, emphasis added).

63. On October 31, 2022, a group of thirty environmental organizations echoed Fairfax Water's concerns and urged the Board not to adopt the Digital Gateway CPA. (Exhibit 6, p. 1). They emphasized that approval of the proposed Digital Gateway CPA would lead to "extensive increases in sediment runoff" and would "convert an extensive amount of natural terrain into impervious surfaces." They stated that this "influx of impervious surfaces will lead to increased stormwater runoff into the Occoquan Reservoir watershed, up to 280 million additional gallons per year." They explained that the extent of development of this size in an existing rural area of the Occoquan Reservoir is unprecedented and that adverse impacts will be felt downstream for years to come. (Exhibit 6, pp. 2-3).

**The Impact of The CPA on The Value of Plaintiffs' Properties
and Plaintiffs' Health and Quality of Life**

64. Plaintiffs' properties either abut the CPA Study Area or are in close proximity to it.

65. In 2016, the Board, in connection with the establishment of the Data Center Overlay District, amended the Part 100 definitions section of the ZO to define a data center as: "a use involving a building/premise in which the majority of the use is occupied by computers and/or telecommunications and related equipment, including supporting equipment, where information is processed, transferred and/or stored."

66. The data center Developers QTS and Compass have contracted to purchase from the Applicant Group (*i.e.*, the private landowners in the CPA Study Area) approximately 1,650 acres of land covered by the CPA.

67. Based on the information in the Developers' three pending rezoning applications under review with the Planning Office, and assuming that the proposed data centers are consistent in size with those approved or currently under construction elsewhere in the County,

there will be approximately 32 two- or three-story data centers or 90 one-story data centers built on the contracted 1,650 acres of the CPA.

68. Data centers are not compatible with low density residential, agricultural and semi-rural adjacent uses for the reasons articulated below. Accordingly, the Overlay District ZO bans data centers in agricultural, residential, and PMR zoning districts. All of Plaintiffs' properties, as well as the entire CPA Study Area itself, are located in zoning districts that ban data centers.

69. Indeed, these data centers are so incompatible with low density residential property that, on April 4, 2022, Catharpin Valley Estates, Oak Valley's immediate neighboring 215-acre community, requested inclusion in the PW Digital Gateway CPA because it would otherwise directly abut the CPA Study Area, which is highly incompatible with its existing low-density residential properties of one home per 10-acre lot.

70. Data centers are large and unsightly and are not the type of building normally nominated for environmental impact or architectural design awards. The height of a data center is typically in multiples of 35 feet. Hence, a three-story data center like those considered under the current CPA plan is approximately the same height as a 10-story high-rise office building. Usually, data centers are virtually windowless and are industrial in appearance. Buildings of such mass and height do not blend in or harmonize with nearby residential and agricultural uses. Moreover, while virtually unnoticeable in an urban setting, the light emanating at night from the 24/7 data centers in this semi-rural/agricultural area will be particularly visible to Plaintiffs. This is another reason that property values will decrease for Plaintiffs who will have a view of the Digital Gateway data centers -- and the light they emit -- from their homes.

71. The impervious surfaces created by the massive data center buildings will cause serious risk to the quality of the groundwater and will lead to a variety of health issues because

of the water pollution. Also, the Plaintiffs who rely on well water will further suffer a diminution of their property values because of the adverse impact of the data centers on their water supply.

72. In addition to being eyesores and causing water pollution, data centers make very noisy neighbors. Noise generated by data centers primarily comes from the elaborate fan systems needed to dissipate the considerable heat generated by the rows and rows of servers, switches and other computer equipment housed within. Because data centers strive for a minimum of scheduled downtime, they operate 24 hours a day, seven days a week, three hundred sixty-five days a year, and the noise-generating cooling systems that service the data centers operate on that same schedule.

73. Under current projections, once all data centers proposed under the CPA have been built, the constant noise will be heard up to 4 miles away.

74. Because no data center development currently exists at the size or scope of that proposed under this CPA, quantitative analysis and modeling present a reasonable approach to assessing the effects the proposed development will have upon noise levels in and around the CPA. Computational analytic modeling, based on recent noise measurements in and around the CPA Study Area and provided to Plaintiffs, conservatively predicts that Digital Gateway data centers will produce noise sufficient to increase the noise Plaintiffs currently experience to over 75 decibels. In decibel terms, the anticipated noise levels generated from the proposed Digital Gateway would be similar to the constant noise experienced while standing 50 feet from Interstate-66 (a heavily traveled highway) in Gainesville.³

³ See <https://highways.dot.gov/public-roads/julyaugust-2003/living-noise> (“Levels of highway traffic noise typically range from 70 to 80 dB(A) at a distance of 15 meters (50 feet) from the highway. These levels affect a majority of people, interrupting concentration, increasing heart rates, or limiting the ability to carry on a conversation. . . . A reduction of sound from 65 to 55 dB(A) reduces the loudness of the sound by one half, while a reduction of sound from 65 to 45 dB(A) results in a loudness reduction of one quarter.”).

75. Prince William County's Great Oak community, which is a residential use in proximity to an existing Amazon data center, illustrates the reality of data centers' negative impacts on residents' health and quiet enjoyment of their properties, the decreased marketability of their homes, and diminution in property values the Plaintiffs face. The controversy over the relentless health-destroying noise that the residents of Great Oaks are experiencing, as well as the data center operator's inability to adequately mitigate that noise, has been widely publicized in local news for many months.

76. The Great Oak experience echoes the experience of residents across the county who have chosen their homes and neighbors because of their quiet residential nature, only to have their quiet enjoyment destroyed by the BOCS' inexorable rush to build data centers wherever space allows. The noise from these and many other data centers is inconsistent with residential life, which is one of the reasons why the BOCS in 2016 created the industrial-centered original DCOZOD and why Overlay Districts in general are not sited near residential areas.

77. The serious health effects from continuous exposure to noise include chronic sleep deprivation, difficulty with concentration, and increases in stress-related conditions such as autoimmune diseases, hypertension and cardiovascular disease. Thus, exposure to the persistent noise generated by data centers at the scale contemplated under this CPA adversely impacts physical and mental health and dramatically lowers the residents' quality of life.

78. Real estate agents familiar with the residential real estate market in the Gainesville/Bristow/Haymarket area are experiencing buyer resistance when considering listings of homes, like those of Plaintiffs, located in close proximity to the proposed data centers. Plaintiff Oak Valley is already aware of two situations in its community in which a potential

buyer chose another community over Oak Valley because of the proximity of Oak Valley to the Digital Gateway CPA Study Area.

79. Based on their own observations of decreased marketability and declining real estate values in other residential neighborhoods located near existing data centers in Prince William County, real estate agents are expecting the low density residential and rural properties values of Plaintiffs' properties to decline in the area surrounding the CPA.

80. In sum, it is the opinion of real estate professionals that with the well-publicized experience of other local residents subjected to the noise and other harmful effects attributed to living near data centers, as discussed above, the passage of the Digital Gateway CPA has, by itself, caused Plaintiffs an **immediate, present diminution in their residential real estate values**. This is so despite the fact that the rezonings themselves, which are currently in process at the Planning Office, have not yet occurred.

ARGUMENT

COUNT I

THE BOARD VIOLATED VIRGINIA LAW BY CONSIDERING AND VOTING ON THE CPA WITHOUT THE REQUIRED CERTIFICATION FROM THE PLANNING COMMISSION.

81. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

82. As indicated above, on November 1 and 2, 2022, the Board conducted a public hearing, and adopted the CPA, which amended the Comprehensive Plan.

83. Section 15.2-2225 of the Virginia Code provides that the Planning Commission ("PC"), upon approval of the comprehensive plan or any part thereof, "shall by resolution

recommend the plan, or part thereof, to the governing body and a copy shall be certified to the governing body.”

84. On information and belief, the PC did not certify a copy of the CPA to the Board. Instead, the PC passed a Resolution which stated it was recommending the August 15, 2022 draft of the CPA plus three additions to the CPA.

85. Moreover, the PC failed to provide any language or implementing directions for two of its recommendations. Specifically, the Planning Commission Resolution stated that it was including the recommendations that the “noise is adequately reduced and/or mitigated, and proper measures are taken to address any potential environmental issues.” It did not explain what an “adequate” noise reduction would be. Moreover, it did not identify the “potential environmental issues.” Nor did it explain what it meant by “proper measures” to address those environmental issues.

86. Section 15.2-2226 of the Virginia Code provides that the certification of a copy of the plan or the plan amendments is a prerequisite to the Board public hearing and to its adoption of a Comprehensive Plan Amendment.

87. The purpose of the certification requirement is so that the Board will be provided with a complete copy of the plan language the Planning Commission has recommended. The PC failed to adopt specific recommendations and did not certify a copy of the plan to the Board.

88. A representative of Plaintiff Oak Valley submitted to the Clerk of the Board and the Clerk of the Planning Commission written requests for the Planning Commission’s certification to the Board. Although a response was received for both requests, neither response included a certification by the PC to the Board.

89. Because the PC failed to satisfy the statutory prerequisites for the Board's consideration of the CPA, the Board had no authority to consider the PC's incomplete recommendations and the uncertified CPA.

90. For the above reasons, Defendant Board's consideration of and vote on the CPA violated Virginia law and the Dillon Rule and thus is void *ab initio*.

COUNT II

THE PUBLIC NOTICE CONCERNING THE BOARD'S ACTION WITH RESPECT TO THE CPA DID NOT COMPLY WITH THE APPLICABLE STATUTORY NOTICE REQUIREMENTS.

91. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

92. Section 15.2-2204(A) Va. Code specifies that Public Notice ("Notice") providing a "descriptive summary" of proposed actions of the Board must be published in a local newspaper.

93. The Notice published in connection with the Board's planned action to adopt the CPA did not provide a summary sufficient to alert a reasonable resident of Prince William County of the Board's planned action.

94. The actual and sole purpose for the CPA was to "replan" the 2,133-acre parcel for use by data centers. Indeed, the CPA as adopted states: "PW Digital Gateway Special Study Area envisions creating a technology corridor along Pageland Lane for the **development of data center uses**, a defined targeted industry." ⁴ (Emphasis added).

95. Meanwhile, the Notice (as published in the Washington Post) stated that the County will "replan" 2,139 acres. However, the Notice was completely silent on the issue of the

⁴ See page 5 of 58 of the Digital Gateway CPA as adopted: [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1666626/Res. No. 22-508.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1666626/Res._No._22-508.pdf)

industry for which that acreage was going to be “replanned,” *i.e.*, data centers. (Exhibit 1). The Notice provided absolutely no indication that this area is being replanned so as to allow the location there of data centers. Thus, the Notice states that the parcels are currently zoned A-1 Agricultural and SR Semi-Rural Residential; however, it gave no indication of what it truly means to change the comprehensive plan designation from “Agricultural or Estate, and ER, Environmental Resource” to “T/F, Technology/Flex with a T-3 Transect, Parks and Open Space, County Registered Historic Site, and Environmental Resource Overlay.”

96. The planning and land use terms document on the Planning Office website does not define Technology/Flex or T-3 Transect.⁵

97. The word “technology” does not automatically translate to massive industrial data centers and “transect” adds nothing to the understanding of what is “planned.”

98. As such, the Notice does not meet the statutory requirements of Section 15.2-2204(A) Va. Code because it does not provide a sufficiently descriptive notice of the Board’s contemplated actions. Accordingly, the Notice violates the Dillon Rule and the Board’s adoption of the CPA is, therefore, void *ab initio*.

COUNT III

THE BOARD VIOLATED VIRGINIA’S OPEN MEETINGS REQUIREMENT.

99. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

100. At least twice during its consideration of the CPA, the Board violated Virginia’s open meetings requirement.

⁵ <https://www.pwcva.gov/departments/planning-office/planning-land-use-terms#T>.

101. Virginia's Open Meetings Law, Section 2.2-3707(A) Va. Code, provides that, with certain limited exceptions concerning closed meetings undertaken with advance public notice, "all meetings of public bodies shall be open."

102. Moreover, Section 2.2-3707(C) specifies that "[e]very public body shall give notice of the date, time, and location of its meetings."

103. Closed meetings may be conducted for certain limited purposes as specified in § 2.2-3711 Va. Code.

104. Pursuant to § 2.2-3712 Va. Code, advance notice of a closed meeting must be given in an open meeting.

105. According to information filed in Case No. 1:22cv00255-LMB-JFA (U.S. Dist. Ct., E.D. Va.), and on information and belief, in April 2022, a telephone call was conducted between at least three members of the Board, Mary Ann Ghadban, Jon Sanders Brower and perhaps others, concerning Ghadban's then-pending application for amendment of the Prince William County Comprehensive Plan. Because, on information and belief, this telephone call involved the simultaneous conversation of three or more members of the Board, it constituted a meeting within the meaning of the Virginia Open Meetings Law.

106. This telephone meeting violated Virginia's Open Meetings law because it was not open to the public.

107. It also violated § 15.2-2204(A) Va. Code because no advertised public notice was given of this meeting.

108. In addition, it violated §§ 2.2-3711 and 2.2-3712 Va. Code because, on information and belief, this closed meeting was not conducted for one of the limited purposes

specified in Section 2.2-3711 nor was it publicly disclosed in advance in an open meeting as required by Section 2.2-3712.

109. At the conclusion of the public hearing on November 2, 2022, prior to the Board's vote, Supervisor Victor Angry proposed a series of amendments to the CPA. He stated expressly that, in preparing these amendments, he had "worked with" Vice Chair Margaret Franklin, Supervisor Kenny Boddy, and Supervisor Andrea Bailey. He also said that he did not work with Supervisors Jeanine Lawson or Yesli Vega because he knew they were against the project and, therefore, would not have any comments on or be interested in the proposed amendments. He did not identify the context in which this collaboration took place; however, on information and belief, and given the apparent scripted presentation of the proposed amendments, the collaboration may have been through in-person meetings, simultaneous emails, or simultaneous telephone calls. If such is the case, it appears likely that that such efforts violated Virginia's Open Meetings law.

110. In the above two instances, the Board appears to have violated Virginia's Open Meetings Law. Plaintiffs are entitled to proceed to trial on this issue in order to obtain a determination from this Court as to the Board's compliance with the applicable Virginia law and to obtain the Court's guidance as to the future compliance of the Board with the Open Meetings Law.

111. Moreover, if a determination is made that the Board violated the Open Meetings Law in either instance, this means that Board has also violated the Notice requirements of Section 15.2-2204(A). Accordingly, the CPA must be invalidated as void *ab initio*.

COUNT IV

THE COUNTY BOARD ACTED ARBITRARILY AND CAPRICIOUSLY IN APPROVING THE CPA.

112. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

113. Section 15.2-2223 of the Virginia Code provides that “[t]he comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities.”

114. The Board acted arbitrarily and capriciously, and in violation of Section 15.2-2223 of the Virginia Code in adopting the Digital Gateway CPA. Specifically, in its desire to quickly approve the Digital Gateway CPA, the Board:

- Ignored negative comments from its own Staff and appointed commissions, the Stantec Report commissioned by the Board, other governmental entities, and expert outside groups.
- Approved the Digital Gateway CPA without waiting for the results of the Water Study that the Board itself had commissioned.
- Failed to adequately address noise issues that the Board is well aware will result from the operation of the Digital Gateway data centers.
- Relied on unsubstantiated financial projections while ignoring and/or minimizing the costs to taxpayers required to implement the Digital Gateway CPA.
- Gave a private individual an influential and unwarranted role in designing the CPA so as to benefit her private financial interests and of those of the Applicant Group and the Developers.

- Conducted the public hearing as a “check the box” exercise, without taking into account and analyzing the input from the commenting parties and prepared amendments to the Digital Gateway CPA without first hearing public testimony and without circulating the amendment to two members of the Board.

Each of these is discussed below.

115. First, as noted above, the Board has received comments from numerous groups, including its own staff, the Stantec Report that it commissioned, and thirty environmental groups warning against locating the Digital Gateway in the environmentally sensitive area near the Manassas Battlefield Park.

116. The Stantec Report concluded that no new data center land is needed in Prince William County. Moreover, in the event that additional space is desired for more data centers, the Stantec Report recommended expanding the existing DCOZOD to adjacent areas and specifically cautioned against locating data centers near the Manassas Battlefield.

117. The PWC ‘s own Watershed Management Branch recommended that the Comprehensive Plan remain unchanged and thus advised the Board to refuse to adopt the CPA. Nevertheless, the Board chose to ignore the recommendations from the Stantec Report and from the staff of the PWC Watershed Management Branch, as well as from numerous environmental groups that have many years of experience addressing water pollution and related issues, all of which recommended against locating the Digital Gateway in this environmentally sensitive area.

118. Although Plaintiffs are the most directly affected by the CPA, the opposition to the CPA spanned jurisdictional boundaries and reached even the federal level. The Board not only ignored the politically unrepresented Plaintiffs but saw fit to ignore meaningful political voices as well. For example, the Board ignored the vehement opposition from the U.S. Department of the Interior as well as neighboring Fairfax County. In a December 3, 2021 letter

to the Board, the Superintendent of the Manassas Battlefield Park stated: “I believe that the intensive development of the Pageland Lane [Digital Gateway] corridor is the single greatest threat to Manassas National Battlefield Park in nearly three decades.” (Exhibit 7). The Deputy County Executive of Fairfax County stated in a letter dated October 24, 2022 that the “Pageland [Digital Gateway] Corridor should be designated as Agriculture and Forestry (AF), in order to ensure compatibility with surrounding uses and to protect the viability of the Occoquan Reservoir as a regional drinking water source.” (Exhibit 8, p. 8).

119. Moreover, the Board’s own appointed commissions, including the Racial and Social Justice Commission, the Historical Commission and the Sustainability Commission all voiced strong opposition to the CPA.

120. The Board’s decision to proceed forward on the Digital Gateway CPA, thus favoring the interests of a few developers and landowners, in the face of such legitimate and principled opposition, is arbitrary and capricious and an abuse of discretion.

121. Second, given the importance of the Occoquan Watershed to a significant portion of the residents of both Prince William County and more broadly the Northern Virginia Region, the Board’s failure to wait until the completion of the Water Study -- a study that had been specifically requested by Fairfax Water and agreed to by the Board--is arbitrary, capricious and an abuse of their discretion.

122. Third, on information and belief, the Board is aware that data centers are noisy and detrimental to the health and quality of life of Prince William County residents who have the misfortune to live near to these industrial uses and must live with the unrelenting noise.

123. The Board also is aware that Amazon has not been able to adequately mitigate the noise emanating from its data center in the Great Oak Community and that its failure to do so has

resulted in a multitude of complaints from injured nearby residents. In addition, the Board is aware that the County has no mechanism to enforce the noise ordinance civilly. Moreover, the Board is, or should be aware, that the maximum criminal fine for a noise ordinance violation (a class 2 misdemeanor) issued by the police department is \$1,000, which amounts to the simple cost of doing business for a data center.

124. In the face of the severe infringement on data-center-generated noise on the health and quality of life of County residents who live near data centers, the Board rushed through the approval of this CPA before it was certain that data center noise can be adequately mitigated. By elevating the economic needs of two powerful data center Developers and some landowners under contract to them, over the needs of the many residents who will be impacted by this relentless data center noise, the Board acted arbitrarily and capriciously.

125. Fourth, the Board's focus on unsubstantiated financial projections concerning the revenues and costs the County expects will result from the Digital Gateway Corridor was arbitrary and capricious and an abuse of discretion. The County's Deputy Finance Director, Tim Leclerc, published a model that has been publicized by the County as showing that the County's revenue from the Digital Gateway development would be \$400 million annually. However, in press interviews, Mr. Leclerc himself has refused to stand behind the accuracy of his own predictions. Thus, he has been quoted as saying that his model "is fraught with possible errors" and that "[q]uite frankly, none of us have enough information to value the tax revenue" from a not-yet-built project.⁶

126. Leclerc's original predictions have not stood up to scrutiny. For example, Plaintiffs have learned that the \$400 million, if realized at all, would only be realized after 20

⁶ https://www.princewilliamtimes.com/news/data-center-tax-revenue-can-be-hard-to-predict/article_b488a28a-553d-11ed-a5ff-7fbae647d1aa.html.

years, and that the County's estimate did not account for costs to the County for infrastructure, staff time and other costs.

127. Furthermore, as discussed below, because the Developers are only purchasing 1,650 of the 2,133 acres, the County must purchase the remaining acreage, approximately 500 acres, intended for parkland, presumably at the same rates the Developers are paying per acre which, on information and belief, is up to \$1M per acre. Yet the Leclerc predictions and County's estimates do not account for such a significant real estate purchase.

128. The above examples are but a few of the many flaws in the County's arbitrary reliance on faulty financial predictions that, at a minimum, require further planning and study before the County can move forward in a reasoned and predictable manner.

129. Fifth, the Board's actions during the entire CPA process demonstrated arbitrary and capricious selectivity in their choice of voices listened to. The Board so dramatically tilted the balance in favor of a small group of powerful and moneyed interests that in adopting the CPA it managed to all but ignore its duty to the "general welfare of the inhabitants" of the County, and to the surrounding residents and Plaintiffs in particular. In so doing, the Board violated the principles of Section 15.2-2223 Va. Code.⁷

130. Starting with the expansion of the CPA "Study" Area in July 2021 beyond the 800 acres that Ms. Ghadban had requested, the Board seized on the promise of having the largest data center corridor in the country and put blinders on in order to achieve this goal.

131. This was followed by a direction "from the BOCS" according to Applicant's November 2, 2021 Application to steer away from the Data Center Overlay process referenced in

⁷ Further evidence of the Board's deference to the wishes of the developers is evidenced by the Board's conduct of the public hearing. After hearing over 10 hours of testimony from the public, the Chair would not permit questions on issues raised by the testimony and virtually no time was spent by the Board discussing the testimony.

Applicant's September 3, 2021 Application, in favor of a stand-alone CPA application. Although it was a stand-alone application, Staff continued the fiction that Ghadban had a concurrent rezoning proposal, thus enabling her to participate in the process under the guise of "Applicant" and to substantively influence the CPA through nonpublic collaborative meetings and privately sharing input and reactions to the proposal with Staff.

132. Ghadban's unwarranted seat at the table helped tailor the CPA to the needs of the Developers purchasing the properties of the Applicant Group. At the end of the process, when the Developers perceived that Staff was not giving in to its requests, they took matters into their own hands, redlined the Staff's proposed CPA amendment, and submitted the revised document to the Planning Commission, which adopted it wholesale.

133. The Developers' three zoning proposals currently are being processed through the Planning Office. Through their role in the plan review process --a role that no environmental group or neighborhood coalition was afforded -- the rezonings are on a fast track.

134. Sixth, further evidence of the arbitrariness of the Board's decision-making process on the Digital Gateway CPA is provided by the Board's conduct of the public hearing on the CPA proposal that it conducted on November 1 and 2, 2022. At that public hearing, the Board heard over 10 hours of public testimony.

135. Notwithstanding Chair Wheeler's admonition that the Board was there to "hear from the public," it was apparent that the public testimony had absolutely no impact on the Board's action.

136. Following the conclusion of the public testimony, which continued overnight and into the following morning, Chair Wheeler proceeded directly to consideration of the CPA. She did not propose to defer decision on the CPA to a subsequent meeting to allow Staff and the

Supervisors to consider the public comments nor did she provide time for any discussion of the public testimony.

137. Indeed, when Supervisor Lawson stated that she wished to address some questions to the Planning Staff based on some of the comments that she had heard during the public testimony, Chair Wheeler would not permit it. Although the Chair stated that the Planning Staff was welcome to offer any observations about points that they had heard during the public testimony, the Staff unsurprisingly declined to make any comments.

138. After moving to approve the CPA, Supervisor Angry then presented a series of amendments on which he said he had “worked with” Vice Chair Margaret Franklin, Supervisor Kenny Boddy, and Supervisor Andrea Bailey. The amendments had been prepared prior to the public hearing and, upon information and belief, were not provided to either Supervisor Lawson or Supervisor Vega.

139. Chair Wheeler’s refusal to allow Supervisor Lawson to ask questions of the Planning Staff following the public hearing was arbitrary and capricious in view of her earlier commitment, prior to the public hearing portion of the meeting, to allow such questions. Permitting Supervisor Lawson to direct such questions to the Planning Staff would have contributed materially to Supervisor Lawson’s ability (and the ability of other Supervisors) to fully understand and address the issues raised by the public testimony.

140. Indeed, Chair Wheeler’s refusal to permit any Board discussion of the public hearing comments, except what might be covered by the supervisors during their discussion of Supervisor Angry’s motion, converted what might otherwise have been a meaningful opportunity for public input into the decision-making process into a “check the box” exercise where the public input had no real relevance to the Board’s decision on the CPA.

141. The failure to allow for discussion of the public testimony, including Chair Wheeler's refusal to allow Supervisor Lawson to ask questions based on the public testimony, was arbitrary and capricious.

142. Moreover, the preparation of an amendment by Supervisor Angry, in combination with several other Supervisors and with the apparent approval of Chair Wheeler, also was arbitrary and capricious because it required Supervisors Lawson and Vega to vote on the amendments without having previously seen them, as had the other Supervisors, and denied them the opportunity to provide input into the preparation and language of those amendments that had been provided to the other Supervisors.

COUNT V

THE CPA WOULD UNLAWFULLY FORCE THE TAXPAYERS TO PURCHASE APPROXIMATELY 500 ACRES OF LAND IN THE DIGITAL GATEWAY TO BE USED AS PARKLAND.

143. Plaintiffs hereby incorporate by reference the foregoing allegations as if fully realleged here.

144. As set forth in Counts I through IV above, the Board adopted the CPA in violation of state law, and in so doing, the Board's action was a violation of the Dillon Rule, and is arbitrary, capricious and an abuse of discretion.

145. Individual Plaintiffs are Prince William County taxpayers. They wish to protect the value of their properties and to preserve their quality of life. In so doing, they seek to safeguard the rural and semi-rural character of their surrounding community.

146. The CPA consists of approximately 2,139 acres, all owned by landowners under contract to sell to Developers; however the Developers are only buying 1,650 acres, per the

rezoning applications. Therefore, the individual landowners will still have title to approximately 489 acres of land in the CPA not bought by Developers.

147. According to the County's Watershed Management Branch, the 1,650 acres of the CPA developed as data centers will suffer "the nearly wholesale clearing and flattening of large parcels" resulting in "extensive and incompatible changes both within the proposed CPA and with all abutting land uses." (Exhibit 5, p. 2). To counterbalance the degradation of the 1,650 acres, the County has designated parkland and open space (POS) throughout the CPA Study Area.

148. Some of the parkland and open space land is on the 1,650 acres the Developers will own, and the rest is on the approximately 489 acres of land not being bought by the Developers.

149. As stated in Count IV, one of the elements missing from the County's financial projections concerning the data centers is the estimated cost to the County (*i.e.*, the taxpayers) of the data centers.

150. In the November BOCS Hearing, after the Staff presentation, Supervisor Lawson requested information from Staff concerning the costs to the taxpayers of the data center use in the Digital Gateway in terms of infrastructure and other costs.

151. Although Chair Wheeler attempted to halt this line of inquiry at least twice, Supervisor Lawson managed to bring facts to light with regard to an expenditure that would be incurred as the result of the Digital Gateway development.

152. Supervisor Lawson focused on the 489 acres of the CPA (which she rounded up to 500) that would not be bought by the Developers.⁸ Through her colloquy with Staff, she

⁸ Supervisor Lawson's discussion with Staff concerning the parkland can be heard at BOCS Video Archive, November 1, 2022, Meeting record at approximately 2:49:16 through 2:56:15.

determined that out of the 800 acres in the CPA devoted to parks and open space, only approximately 300 acres would be located on the 1,650 acres purchased by the Developers. She concluded that the County would need to purchase the remaining approximately 500 acres. County Staff did not disagree with this characterization.

153. In response to Supervisor Lawson's inquiry, David McGettigan, Long Range Planning Manager discussed the "tools" the County has in place to purchase the parkland. He stated, "It's not going to be consistent with the Comp. Plan if we don't designate that land for parks and open space."

154. In order for the designated parkland (not owned by the Developers) to be preserved as such, there must be an entity to own and keep that land as parkland or open space. Under the Virginia and U.S. Constitutions, the property owners in the Applicant Group whose land is part of the land designated as parkland or open space cannot be forced to keep their land as parkland or open space. The Applicant Group has not demonstrated any willingness or intent to donate 489 acres to the County for its use as POS in order to satisfy the CPA POS requirement.

155. If the land must be parkland -- and under the CPA Mr. McGettigan indicated that it must-- the County must therefore purchase the land from those landowners and pay them just compensation for it.

156. Thus, this roughly 500 acres of parkland designated in the CPA is going to be paid for, in Supervisor Lawson's words, "on the backs of the Prince William County taxpayers."

157. However, Mr. McGettigan did not respond to Supervisor Lawson's question as to whether the County was going to pay \$1 million per acre (which Compass reportedly is paying) or \$500,000 per acre (which QTS reportedly is paying) for the parkland

158. In any event, even if the price were \$10,000 per acre instead of \$1,000,000 per acre, the total amount the taxpayers would pay for this parkland would be substantial approximately--\$5,000,000.⁹

159. The cost of the land is a specific, identifiable expense directly attributable to, and in support of, the unlawfully adopted CPA. As such, under Virginia law, taxpayers such as Plaintiffs have standing to request that the Court via a declaratory ruling void the underlying policy -- in this case the CPA -- that results in that expenditure.

160. The CPA is surrounded by two world-class parks—the Manassas National Battlefield Park and Conway Robinson Memorial State Forest. Plaintiffs and their fellow Prince William County taxpayers should not be forced to pay for parks which would be not needed, but for the Board’s unlawful, arbitrary and capricious decision to adopt the CPA to allow data centers on the 2,139-acre Digital Gateway parcel.

161. Accordingly, Plaintiffs request the court to void the CPA, and enjoin the County from expending any monies to purchase parkland in the CPA Study Area or for any other purpose to implement the CPA.

PRAYER FOR RELIEF

For the reasons set forth above, Plaintiffs request that the Court grant them the following relief:

- Declare that the Board’s action approving the Digital Gateway CPA was arbitrary and

⁹ Until Plaintiffs have access to discovery they cannot know how much per acre the County has agreed to pay the Applicant Group for their land to be devoted to parks, or whether there is any such agreement. The County is under a nondisclosure agreement (“NDA”) with the Developers. Plaintiffs do not know if County Staff’s failure to be forthcoming at the hearing with respect to infrastructure costs and the costs of this parkland is within the scope of such NDA. However, costs to the taxpayers of the data center development under the CPA should not be shielded by an NDA with Developers.

capricious and that the Board's approval of the CPA is therefore vacated; and/or

- Declare that the Board's action approving the Digital Gateway CPA violated Virginia law and the Dillon Rule and thus is void *ab initio* and of no further force or effect;
- Enjoin the Board from taking any further action to implement the Digital Gateway CPA, including but not limited to any expenditure of funds to purchase parkland in the Digital Gateway Corridor;
- Enjoin the Board from taking any further action based on the Digital Gateway CPA, including but not limited to the processing or approval of any rezoning application requesting authorization for one or more data centers to be located in the Digital Gateway Corridor; and
- Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

**OAK VALLEY HOMEOWNERS
ASSOCIATION, INC.**

IAN C. MIRKES

GABRIELLE J. PYLE

MICHAEL DONEGAN

CHRISTOPHER D. WALL

JEFFREY DELYLE JENSEN

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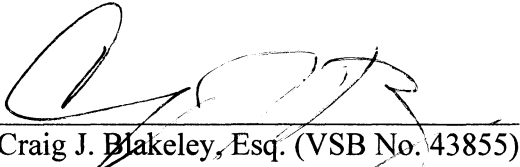
STEPHANIE C. CHARTRAND

JOHN C. HERMANSEN

**Trustee of the John C. Hermansen
Revocable Living Trust**

**JOSE R. MEDINA
Trustee of the Medina Living Trust**

By Counsel

A handwritten signature in black ink, appearing to read 'Craig J. Blakeley', is written over a horizontal line.

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FILED

2022 DEC -5 AM 8:45

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PRINCE WILLIAM COUNTY, VA

BY _____ CLERK