THIRTY-FIRST JUDICIAL CIRCUIT OF VIRGINIA
PRINCE WILLIAM COUNTY
CITIES OF MANASSAS AND MANASSAS PARK

CHAMBERS OF
KIMBERLY A. IRVING
JUDGE

CIRCUIT COURT CHAMBERS
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Dear Counsel:

I took this case under advisement at the conclusion of trial on June 23, 2025. Below, I report my decision and legal reasoning. Attached is an endorsed order implementing this decision.

I. INTRODUCTION

This matter comes before the Court on the complaint of twelve Gainesville landowners seeking declaratory judgment finding the rezoning of 1,790 acres of land void *ab initio*. The rezoning effort at issue in this case is often referred to as the Prince William County "Digital Gateway" project. The Digital Gateway project seeks to allow the development of numerous data centers in this re-zoned area. In this case, three zoning ordinances are at issue: Ordinance No. 23-57 (for "Compass Datacenters"), Ordinance No. 23-58 (for "Digital Gateway South"), and Ordinance No. 23-59 (for "Digital Gateway North"). *See* Def. Exs. 40, 41, and 42. All three of these zoning ordinances were approved by the Prince William County Board of County

Supervisors on December 13, 2023, following a public hearing that started on December 12, 2023, and lasted more than 29 hours. (Hereinafter referred to as the December 12th hearing.)

The Plaintiffs in this case challenge the rezonings based on deficiencies in the advertised notices required under Va. Code § 15.2-2204(A). In particular, they seek to have the action by the Prince William County Board of County Supervisors declared void *ab initio* for two reasons: (1) because the proposed zoning was not timely advertised pursuant to the Code of Virginia and the Prince William County code, and (2) because the "proposed plans, ordinances or amendments" referenced by the advertised notices were not available to the public in a timely manner, as contemplated by the statute.

This Court finds that the advertised notice provided by the County did not comply with either the State or County code. The defects in the advertised notice were solely caused by the County, not the Washington Post, so the "savings clause" of Va. Code § 15.2-2204(A) does not apply. Additionally, the Court finds that the plans, ordinances or amendments referenced by the advertised notices were not properly made available to the public. This Court finds that while some of the Plaintiffs with standing were present at the December 12th hearing, there were others that did not actively participate in the hearing and did not have actual notice. Thus, those Plaintiffs with standing who did not actively participate in the hearing and did not have actual notice – Mr. Mirkes, Mr. Medina, and Mr. Donegan – did not waive their claims in this case under Va. Code § 15.2-2204(B). Therefore, the action by the Prince William County Board of Supervisors is void *ab initio*.

II. PROCEDURAL BACKGROUND AND POSTURE

The Plaintiffs in this case timely filed their complaint with the Circuit Court on January 12, 2024.[1] The Court granted leave for Plaintiffs to amend their complaint on February 2, 2024. The Amended Complaint contained the following seven counts:

1) The Rezonings were void *ab initio* because the published notice did not comply with Va. Code § 15.2-2204(A) or Prince William County Zoning Ordinance § 32-700.60(1).
2) The Master Zoning Plan approved by the Board of County Supervisors violates the Prince William County Zoning Ordinance and the Comprehensive Plan.
3) Prince William County Zoning Ordinance § 32-404.05.1 was unreasonable as applied to waiving he SUP requirements for substation and data centers outside of the overlay zone.
4) The Board of County Supervisors violated Va. Code § 15.2-2284 and flouted the Digital Gateway CPA in approving the rezonings.
5) Approval of the Compass December 13 proffer violated the Code of Virginia and the Prince William County Zoning Ordinance.

[1] Va. Code § 15.2-2285(F) requires "[e]very action contesting a decision of the local governing body adopting...a proposed zoning ordinance or amendment...shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision."

6) Approval of the QTS December 13 proffer violated the Code of Virginia and the Prince William County Zoning Ordinance.
7) The Board of County Supervisors' decision approving the rezonings was *per se* arbitrary and capricious.

On March 19, 2024, the Court granted Defendants' Motions Craving Oyer to have the legislative record from the December 12th hearing appended to the Complaint. Once the Court entered an order confirming the legislative record on August 28, 2024, the Defendants filed demurrers seeking to dismiss the Complaint.

The Court held a hearing on Defendants' demurrers on January 30, 2025. During the hearing, the Court found that the Plaintiffs' Amended Complaint adequately stated a claim as to Count I, and issues of fact were present that needed to be resolved at trial. This Court elected to proceed only on Count I, since a finding that the rezonings were void *ab initio* on those grounds would render all the other counts of the Amended Complaint moot. Thus, the demurrer on Counts 2, 3, 4, 5, 6, and 7 remains pending in this Court.

Trial took place on Count I on June 16, 17, 18, 20, and 23, 2025. At the close of Plaintiffs' case-in-chief, the Defendants moved to strike the Plaintiffs' evidence on multiple grounds, including that Plaintiffs failed to state a claim and failed to prove that they have standing to sue. The motion to strike as to ten of the twelve plaintiffs in this case was denied, but the motion as to two plaintiffs for whom no evidence was presented was granted for lack of standing. The Defendants renewed their motion to strike again at the close of all the evidence in this case, and the motion was again denied. This Court took the case under advisement and is now prepared to rule.

III. PLAINTIFFS' STANDING TO SUE

In land use cases, a plaintiff establishes standing pursuant to the following test:

> First, the complainant must own or occupy real property within or in close proximity to the property that is the subject of the land use determination, thus establishing that it has a direct, immediate, pecuniary, and substantial interest in the decision....
>
> Second, the complainant must allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally.

Friends of Rappahannock v. Caroline County Bd. of Supervisors, 286 Va 38, 48–49, 743 S.E.2d 132, 137 (2013) (internal quotation marks and citations omitted); s*ee also Anders Larsen Tr. v. Bd. of Supervisors*, 301 Va. 116, 121, 872 S.E.2d 449, 452 (2022) (applying the test established in *Friends of the Rappahannock*); *Seymour v. Roanoke County Bd. of Supervisors*, 301 Va. 156, 164–65, 873 S.E.2d 73, 78 (2022) (same); *Morgan v. Bd. of Supervisors*, 302 Va. 46, 59, 883 S.E.2d 131, 138 (2023) (same).

The standing inquiry under this test is a fact-intensive one. *See Carolinas Cement Co. v. Zoning Appeals Bd.*, 52 Va. Cir. 6, 14 (Cir. Ct. 2000) (noting that proximity is a "relative concept," and courts have found varying distances to be "proximate" for purposes of standing in land use cases). The Supreme Court of Virginia has not established a bright-line test for determining when a property is "in close proximity" to an area subject to rezoning. *See e.g. Friends of the Rappahannock*, 286 Va. at 50 (citing *Riverview Farm Assocs. Va. Gen. Pshp. v. Bd. of Supervisors*, 259 Va. 419, 427 (2000)) (noting that the court previously accepted that plaintiffs residing within 2,000 feet of a rezoning area were sufficiently "proximate" to establish standing); *Morgan v. Bd. of Supervisors*, 302 Va. 46, 52 (2023) (noting that Plaintiffs lived approximately 1,200 feet and 1,000 feet from the area to be rezoned); *Grenata Homeowners Ass'n v. Loundon County*, 93 Va. Cir. 192, 211 (Cir. Ct. 2016) (finding that property approximately 480 feet from a rezoned area was sufficiently proximate under *Friends of the Rappahannock*).

Of note here, these cases do not require precise measurements between Plaintiffs' properties and the locations of any buildings approved for construction on the rezoned plot. *See Friends of the Rappahannock*, 286 Va. at 50 (citing *Riverview Farm*, 259 Va. 419 (2000)) (noting that the court in *Riverview* measured the distance from Plaintiff's property to "the proposed use"); *Morgan*, 302 Va. at 52 (measuring the distance of Plaintiffs from the "site"); *Grenata,* 93 Va. Cir. at 211 (measuring from the "Sportsplex," which refers to the property as a whole, rather than a particular building therein). Rather, measurement is made from the Plaintiff's location to the edge of the area to be rezoned.[2]

Similarly, "particularized harm" lacks a bright-line definition. "Particularized harm" is largely defined by contrast to the general public. *See Friends of the Rappahannock*, 286 Va. at 48 (noting in its definition of particularized harm that the harm suffered by plaintiff must be "different from that suffered by the public generally"). Courts have recognized that this often bears a close relationship to the proximity inquiry. *See Grenata*, 93 Va. Cir. at 211 n.1 (noting that "ownership of real property in close proximity to the property at issue establishes the direct, immediate, pecuniary and substantial interest in the decision"). Plaintiffs need not allege that they have *already incurred* such particularized harm, but need only foresee a "potential injury not shared by the general public." *See Seymour v. Roanoke County Bd. of Supervisors*, 301 Va. 156, 168, 873 S.E.2d 73, 80 (2022) (citing *Friends of the Rappahannock*, 286 Va. at 49). For example, courts have found sufficiently particularized harm in cases where Plaintiffs allege they will face decreases in their property value, *see Anders Larsen Trust v. Bd. of Supervisors*, 301 Va. 116, 123, 872 S.E.2d 449, 453 (2022), chronic noise from truck alarms, *see Morgan*, 302 Va. at 61, light pollution, *see Morgan*, 302 Va. at 61, and heightened traffic levels, *see Anders Larsen Trust*, 301 Va. at 123; *Morgan*, 302 Va. at 61.

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[2] Indeed, it is hard to imagine a scenario in which the Court even could require such precise measurements in the standing inquiry, as the courts have expressly recognized that declaratory judgment may be sought in cases like this one, where a future impending injury is the basis for standing. *See Morgan*, 302 Va. at 61.

At trial, the Plaintiff's standing allegations must be "supported in the same way as any other matter on which the plaintiff bears the burden of proof." *See Seymour v. Roanoke County Bd. of Supervisors*, 301 Va. 156, 166, 873 S.E.2d 73, 79 (2022) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). At the same time, for declaratory judgments, the case law clearly establishes that the harm need not have come to pass, so the Plaintiffs need only prove that there is a "substantial risk" that the harm will occur. *See Morgan*, 302 Va. at 61–62; *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013). Thus, the Plaintiffs here need only prove by a preponderance of the evidence that there is a substantial risk they will face particularized harm arising out of the Digital Gateway rezonings.

Ten of the twelve Plaintiffs in this case provided credible testimony showing a substantial risk that they were not only located close to the rezonings, but faced a substantial risk of particularized harm as well.[3] With regard to proximity, each one of these plaintiffs live anywhere from 130 feet to 2290 feet from the area of land that has been rezoned by these Ordinances.[4] Looking at the distances deemed "proximate" by prior cases, all of these properties would likewise be considered proximate to the Digital Gateway rezoning area for purposes of the *Friends of the Rappahannock* test. *See Friends of the Rappahannock*, 286 Va. at 50; *Morgan*, 302 Va. at 52; *Grenata*, 93 Va. Cir. at 211.

The zoning at issue in this case involves three petitions for large parcels of land that together form what has, during the course of this trial, been called "the largest data center... in the United States and possibly in the world." It involves a combined total of over 1,760 acres and over 22 million square feet of buildings to be built. The sheer size of this development cannot be overstated, and it gives credit to the unique concerns raised by Plaintiffs in this case.

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[3] Two of the Plaintiffs in this case – the John C. Hermansen Trust and Roger A. Yackel – presented no evidence of any kind. Accordingly, the Court cannot find proof of standing, and a motion to strike was granted as to them.

[4] Defendants contend that the Plaintiffs must prove standing as to each separate zoning *application* approved by the Board of County Supervisors, including by showing proximity to each of the three separate areas and particularized harm resulting from each of the three separate rezonings. Ultimately, this seems a legally irrelevant endeavor on the facts of this case. The standing inquiry is intended to assess the standing of the *plaintiffs* to bring their suit in the first place, not to fashion remedies after a suit has been brought. *See Coal. to Pres. McIntire Park v. City of Charlottesville*, 97 Va. Cir. 364, 368 (Cir. Ct. 2009) (citing *Cupp v Board of Supervisors of Fairfax County*, 227 Va. 580, 589 (1984) ("The [standing] inquiry has no relation to the substantive merits of the controversy, but is a preliminary jurisdictional matter that focuses solely on the status of the plaintiff or plaintiffs and whether they are the proper parties to proceed with the suit."). Here, it is clear that the three Defendants were acting in tandem and these three applications were ultimately one in the same. Thus, in line with the precedents cited above and other persuasive case law, the Court will only measure the distance from each of the Plaintiffs' properties to the edge of the Digital Gateway rezoning area as a whole. *C.f. Emig v. Am. Tobacco Co., Inc.*, 184 F.R.D. 379, 386 (D. Kan. 1998) ("When there are multiple defendants named who are engaged in parallel conduct, the plaintiff's standing to sue those defendants with whom he or she has not had business or other direct contact does not depend on whether the plaintiff can demonstrate that those additional defendants have injured the plaintiff directly. Rather, the focus for standing purposes is whether the challenged conduct of such additional defendants is sufficiently related to the plaintiff's alleged grievances or injuries that such additional defendants should be liable or legally accountable to the plaintiffs.").

The three zoning applications are interrelated and non-contiguous such that, for example a portion of Digital Gateway North sits above the Compass site and a portion of Digital Gateway North sits below the Compass site. *See* Pl. Ex. 18, 40:48. These particular rezonings are dependent on each other and as such have taken on the name, "the Digital Gateway" to describe the three of them together. In fact, Mr. Westover, co-counsel for H&H Capital Acquisitions, LLC, said during the deposition for Mr. Mirkes: "So we can agree if I refer to the rezonings or the Digital Gateway rezonings, what I'm referring to are the three interrelated rezonings, one filed by Compass or H&H as Compass, and then there were two filed by GWA entities which are also known as QTS." *See* Def. Ex. 36, 26:10–15. Further, all three zoning applications were considered at the same public hearing and the advertised notices were requested together. The Developer Defendants also agreed to engage in certain development activities together as part of their proffers, such as expanding Pageland Lane into a four-lane highway. The Digital Gateway as a whole covers over 1,700 acres and seeks to build over 20 million square feet of data centers and accessory uses. While the plaintiffs argue that the time of construction will be 10-15 years, Mr. Looney, co-counsel for H&H Capital Acquisitions, LLC, told the BOCS that it could be 15-20 years. *See* Pl. Ex. 18, 14:40.

The Plaintiffs that testified in this case proved by a preponderance of the evidence that there was a substantial risk of particularized harm to their properties based on the Digital Gateway rezonings. Plaintiffs testified as to numerous potential harms, including but not limited to: (1) decrease in property values; (2) noise, including operational noise, noise from generator testing, and construction noise; (3) visual impacts, including from light pollution and smoke; (4) potential impacts on water systems; (5) intrusions from power lines; and (6) increased traffic volume in the area.[5]

Nine out of the ten Plaintiffs directly testified that they expected their property values to decline based on the noise of construction, the noise of the data centers, and the view of the data centers from their homes. Many testified that they would not purchase a property next to data centers due to the variety of potential issues raised in this case. Given the pervasive testimony, it appears more likely than not that property values will be negatively impacted by the development of data centers near the Plaintiffs' properties. *See Anders*, 301 Va. at 123.

Nine out of the ten Plaintiffs also directly testified about the risk of noise coming from the Digital Gateway rezoning area. These complaints went beyond mere generalized concern, instead describing particular concerns about how construction noise and operational noise will affect the Plaintiffs' properties. The evidence was clear that the construction from this project

[5] It is also worth noting that the nature of the rezoning itself weighs in favor of finding particularized harm. The Supreme Court in *Friends of the Rappahannock* twice noted that particularized harm was less likely because an area was "already zoned" in a manner that would allow a use complained of. *See Friends of the Rappahannock*, 286 Va. at 49–50. In this case, the rezoning taking place would transform Prince William County's "Rural Crescent" into the "Digital Gateway." The contrast is a striking one, and many of the Plaintiffs themselves alluded to this in their testimony. For example, Mr. Jensen stated that he bought his property in the Oak Valley HOA in part because of the Rural Crescent community.

would take anywhere from 10-20 years and while there were some noise proffers that control the operational "hum" of the data centers once completed, those noise proffers do not cover noise from construction. Moreover, even once the data centers *were* completed, the evidence showed they would need to have emergency generators attached that would regularly be tested. No proffers were entered into evidence that would mitigate noise coming from the emergency use of generators. Mr. Mirkes and Mr. Donegan testified to how invasive generator noise can be for those living nearby. Accordingly, the noise generated by data centers constitutes another particularized harm which is sufficient to confer standing on the Plaintiffs.

While many of the Plaintiffs offered overlapping testimony regarding standing, the testimony at trial showed how harm from noise particularly impacts some Plaintiffs more than others in the Plaintiff group – let alone the general public. Mr. Mirkes is a disabled veteran who suffers from PTSD, anxiety, and migraines. He expects the ongoing construction noise and the noise from the generators to exacerbate his condition. Mr. Jensen operates a honeybee apiary with 25 hives. His property follows Lick Branch, which the evidence shows is next to Digital Gateway South. He testified not just to the same noise concerns raised by other Plaintiffs, but he also mentioned that the noise will negatively impact his bees. Mr. Rohrer lives only 130 feet from the boundary of Compass. His six children are homeschooled, and he fears that the noise from construction will create a constant distraction from their schooling. Ms. Pyle testified that she has a son with special needs. Her son is only comfortable in a quiet setting and spends substantial time outside in the pool. Ms. Pyle indicated that she would have to move when the construction starts. Noise negatively impacts her son in an extreme way, causing him to hit himself or others when he gets frustrated. Mr. Medina testified that he lives near Digital Gateway North and has horses. He is concerned that the construction noise will negatively impact the health of his horses.

The testimony of Plaintiffs also showed that the proposed zoning amendments are silent on where power lines and electrical sources will be placed, and it is unknown how many generators will be required and at what rate they will be running. While Mr. Bradshaw expressed concern that a power line would likely run through his property based on an easement, many others expressed frustration with the lack of certainty of where buildings were going to be placed, how tall they will be, how many generators they will need, and where all the other power lines will be placed.

In sum, ten of the twelve Plaintiffs in this case provided credible testimony showing a substantial risk that they were not only located close to the rezonings but faced a substantial risk of particularized harm as well. Each of them is situated differently from the public as a whole and as such they each have standing to bring this suit.

IV. DEFECTS IN THE PUBLICATION OF NOTICE ADVERTISEMENTS

The advertised notice provided by the County in this case was defective in that the first and second advertisements were not separated by six days as required by both the State code and

County ordinance. Additionally, the zoning was advertised by reference and the referenced materials were not available to the public until five days in advance of the meeting. The "savings clause" of Va. Code § 15.2-2204(B) does not apply because the County failed to give a correct and timely notice as required and there was no fault on the part of the Washington post.

A. Timing of Newspaper Publications Under Va. Code § 15.2-2204(A) and PWCZO § 32-700.60

Under Va. Code § 15.2-2204(A), as enacted at the time of the rezoning, localities were required to advertise the public meeting to approve a rezoning in some newspaper published or having general circulation in the locality. *See* Va. Code Ann. § 15.2-2204 (2023). The statute at issue states:

> The local planning commission shall not recommend, nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality, with the first notice appearing no more than 14 days before the intended adoption... As used in this subsection, "two successive weeks" means that such notice shall be published at least twice in such newspaper, with not less than six days elapsing between the first and second publication.

Va. Code Ann. § 15.2-2204(A) (2023).

The issue presented here pertains to the "two successive weeks" requirement of Va. Code § 15.2-2204. Prince William County Zoning Ordinance § 32-700.60 likewise requires the first and second advertisement to be published with "not less than six days elapsing" between them, creating the same issue for both. *See* Prince William County, Va., Code § 32-700.60 (hereinafter "PWCZO § 32-700.60"). The record shows that three advertised notices related to the December 12th hearing ran in the Washington Post: the first on Saturday, December 2; the second on Tuesday, December 5, 2023; and the third on Saturday, December 9, 2023.

Here, the plain text of Va. Code § 15.2-2204(A) states that there must be at least a six-day gap between the first and second advertised notices. Following the ordinary meaning of the words "first" and "second," the first advertised notice was published on December 2, and the second advertised notice was published on December 5. Since these two advertised notices were less than six days apart, the notice for the public hearing is defective under the statute. *See Glazebrook v. Bd. of Supervisors*, 266 Va. 550, 554 (2003) ("If the notice published by the Board did not meet the requirements of Code § 15.2-2204, the Board acted outside the authority granted by the General Assembly....").[6]

[6] In Virginia, local governments are permitted to enact local ordinances that impose more restrictive requirements than state law, so long as the more restrictive requirements do not permit what the state law disallows. *See Wayside Rest., Inc. v. Va. Beach*, 215 Va. 231, 234, 208 S.E.2d 51, 53–54 (1974) ("The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute

Defendants contend that interpreting Va. Code § 15.2-2204(A) in this manner would create an absurd result where a locality could be penalized for providing additional notice for a public hearing. However, the absurdity doctrine should only be invoked where a textual reading of the statute would yield a result that is "internally inconsistent or otherwise incapable of operation." *See City of Charlottesville v. Payne*, 299 Va. 515, 532, 856 S.E.2d 203, 211 (2021). While the plain language of Va. Code § 15.2-2204(A) may yield results that are odd or counterintuitive, the statute itself is not incapable of operation when read directly. Indeed, by the text of the statute as-is, a locality *could* provide additional notice of a public hearing, it would just need to come after publication of a compliant second notice.

The legislature has clearly indicated interest in dictating the timing of advertised notices by specifically changing those requirements, but not outright eliminating them, in subsequent versions of the statute. *See* 2024 Va. Acts 225 (changing the timing requirement to have the first notice appear no more than 28 days and the second notice appear no less than 7 days before the public hearing); 2025 Va. Acts 52 (changing the timing requirement yet again to require the second notice to appear no less than 5 days before the public hearing). This reinforces the legislature's intent to specifically dictate the timing of the notices. [7]

Va. Code § 15.2-2204(A) includes a "savings clause," which would deem the advertised notices compliant if the publishing newspaper was responsible for the timing defect. The "savings clause," as enacted at the time of the December 12th hearing, provides:

> In any instance in which a locality has submitted a correct and timely notice request to such newspaper and the newspaper fails to publish the notice, or publishes the notice incorrectly, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality.

See Va. Code Ann. § 15.2-2204(A) (2023). For a locality to be "deemed to have met the notice requirements" of Va. Code § 15.2-2204(A), the locality must have submitted a notice request that is both "correct and timely." *Id.*

The "savings clause" applies when "the *newspaper fails* to publish the notice or *publishes* the notice incorrectly." Va. Code Ann. § 15.2-2204(A) (2023) (emphasis added). Applying these

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limits the requirement for all cases to its own prescription."). However, when local governments adopt higher standards, the law still holds them to those standards, and actions in violation of such ordinances will be void ab initio. *See Renkey v. County Bd.*, 272 Va. 369, 376 (2006) (citing *Hurt v. Caldwell*, 222 Va. 91, 97–98 (1981)). Since PWCZO § 32-700.60 includes the same six-day separation requirement between the "first and second publication," the advertised notices in this case are likewise defective under the Prince William County Zoning Ordinance.

[7] The Court also notes that, by imposing mandatory notice procedures that must be followed before enacting zoning ordinance, Va. Code § 15.2-2204(A) imposes a restriction on the exercise of legislative power by localities. Accordingly, Dillon's Rule would apply to statutory construction. The Supreme Court of Virginia has stated that Dillon's Rule is "a rule of strict construction," and "if there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body." *See Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576 (2012) (citing *Board of Supervisors v. Reed's Landing Corp.*, 250 Va. 397, 400 (1995)).

verbs to the newspaper suggests an element of fault on the part of the newspaper. Such fault can only reasonably be found when the newspaper accrues a duty to publish and *fails* to do so. Whether a duty arises in the first place is contingent on the *locality* submitting "a correct and timely notice request to such newspaper" in the first place.

The Court finds that on Monday, November 20, 2023, at 12:31 p.m., the Clerk to the Board of County Supervisors, Andrea Madden, sent an email to the Washington Post. The email provided billing information and requested an ad proof when available. *See* Pl. Ex. 3. Almost three hours later, Brenda Barbee of the Washington Post responded to Ms. Madden by email. In this email, she stated: "Email proof of your notice has been sent....*Please confirm publication by 3p.m. deadline on Tuesday November 21 (holiday deadline)*, by email or phone...." See Pl. Ex. 5 (emphasis added). The County failed to send the required confirmation, and the ad was not published on November 28, 2023. All three members of the Washington Post staff deposed in this case indicated that they would not send an ordered ad out for publication unless the client sent confirmation that the proof was correct. See Def. Ex. 31, 37:17–22; Def. Ex. 32, 11:3–10, 14:4–7; Def. Ex. 33, 20:21–21:5. Accordingly, the County's request to run the ad in the Washington Post on those days was not correct and timely, and the Washington Post did not fail to run the ad. Therefore, the "savings clause" of Va. Code § 15.2-2204 does not apply.

B. Failure To Have Documents Available Which Were Advertised By Reference

Va. Code § 15.2-2204 is titled "Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments." The statute directs how and when localities must advertise the plans, ordinances and amendments they intend to adopt. The first paragraph of the statute deals with the form the advertisement. It indicates that advertisement of the text of proposed plans, ordinances or amendments may be made "in full" or "by reference." The second paragraph provides instructions for the timing of advertised notices.

While there is scant case law directly addressing when the text of proposed plans, ordinances or amendments must be made available for advertisement by reference, the timing requirements for advertisement by reference are clearly delineated by the second paragraph of Va. Code § 15.2-2204(A). The Code states that a locality may not "adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks." As such, this Court finds that if a locality chooses to advertise by reference, the full text of proposed plans, ordinances or amendments must be available for contemporaneous public review during the two successive weeks of newspaper advertisements.

The version of Va. Code § 15.2-2204(A) in effect at the time of the December 12th hearing provides:

> Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by

reference. Every such advertisement shall identify the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

See Va. Code § 15.2-2204(A) (2023). While the full text of a proposed zoning ordinance or amendment is not required to be in the advertised public notice, it is permitted to be. *See id.* When a locality decides not to directly advertise the full text of a proposed zoning ordinance or amendment, then they may instead advertise it by reference. *See id.*

When advertising by reference, the locality must identify the place where copies of the proposed plans, ordinances, or amendments may be examined. *See id.* This requirement has been in Va. Code § 15.2-2204 and its predecessors since 1962. *See* 1962 Va. Acts ch. 407; Va. Code § 15-961.4; Va. Code § 15.1-431. Reading the term "by reference" together with this requirement, an advertisement "by reference" must refer the reader to the full text of the zoning ordinance or amendment. *See Glazebrook v. Bd. of Supervisors*, 266 Va. 550, 556 (2003) (noting that prior to addition of the "descriptive summary" requirement, Va. Code § 15.2-2204 needed to "direct readers to the physical location of the actual text of the proposed amendments") (emphasis added). Indeed, if the full text of the proposed zoning ordinance or amendment would necessarily need to be available on the date of the first advertisement when advertised in full, it is hard to imagine that the legislature would permit a different timeline for making documents available for advertisement by reference. *See Va. Elec. & Power Co. v. State Corp. Comm'n*, 300 Va. 153, 161, 861 S.E.2d 47, 51 (2021) (noting that it is the duty of courts "to interpret the several parts of a statute as a consistent and harmonious whole so as to effectuate the legislative goal").

As such, this Court finds that if a locality chooses to advertise by reference, the full text of proposed plans, ordinances or amendments must be available for public examination starting on the date of the first advertised notice.

Va. Code § 15.2-2204 has been subject to many legislative amendments. Even before the "descriptive summary" requirement was added to the statute in 1992, the statute's purpose was clear: to give residents notice of what the county is intending to adopt with regard to land use and zoning ordinances. *See Lawrence Transfer & Storage Corp. v. Bd. of Zoning Appeals*, 229 Va. 568, 571 (1985) ("The statute's obvious intent is to afford property owners who are closest to the land involved an opportunity to be heard by the Board."); *Bd. of Supervisors v. Snell Constr. Corp.*, 214 Va. 655, 658 (1974) (noting that Virginia zoning statutes are designed to prevent zoning changes from being made "suddenly, arbitrarily, or capriciously" and "only after a period of investigation and community planning"); *Davis v. Stafford Cty. Bd. of Supervisors*, 20 Va. Cir. 122, 124 (Cir. Ct. 1990) (citing 82 Am. Jur. 2d, Zoning and Planning, § 53, Notes 8-10, p. 473); *Conner v. Bd. of Supervisors of Prince William Cty.*, 7 Va. Cir. 62, 63 (Cir. Ct. 1981) (quoting *Ciaffone v. Community Shopping Center Corporation*, 195 Va. 41 (1953)) (noting that the purpose of this statutory provision is to ensure citizens are "apprised of the proposed changes to be acted upon").

In 1992, the legislature added a requirement that advertisements under Va. Code § 15.2-2204(A) contain a "descriptive summary." *See* 1992 Va. Acts 757. This requirement generated several cases where local zoning actions were found void *ab initio* due to inadequate "descriptive summaries." *See Glazebrook*, 266 Va. at 554; *Rebh v. County Bd. of Arlington County*, 80 Va. App. 754, 766 (2024). Accordingly, the legislature removed this requirement in early 2023, before the December 12th hearing. *See* 2023 Va. Acts 506.

This amendment did not change the purpose of the statute as a whole. Indeed, the case law interpreting the descriptive summary requirement reiterated the purpose of the statute and shed light on the importance of having the text of proposed plans, ordinances, and amendments readily accessible to the public. *See Glazebrook*, 266 Va. 550, 556 (2003) (noting that prior to 1992, the advertised notice under Va. Code § 15.2-2204(A) did not require "a summary of any kind," but instead relied on the notice "direct[ing] readers to the physical location of the actual text of the proposed amendments"); *see also Gas Mart Corp. v. Bd. of Supervisors*, 269 Va. 334, 345 (2005) (reiterating *Glazebrook*'s argument that "the intent of the statute is to generate informed public participation by providing citizens with information about the content of the proposed amendments and the forum for debate concerning those amendments"); *Rebh*, 80 Va. App. 754, 766 (2024) (reiterating the reasoning of *Glazebrook* and emphasizing that the General Assembly did not expect "affected citizens to engage in legal research in order to decide whether to participate in the hearing or to decide what their interests may be in a proposed amendment"); *Morgan v. Bd. of Supervisors of Hanover County*, 83 Va. App. 720, 739 (2025) ("Code § 15.2-2204(A) is entirely focused on notice and what is required for adequate notice such that 'persons affected may appear *and present their views*.'") (emphasis added). [8] In fact, the removal of the "descriptive summary" makes it all the more important that affected citizens be able to access proposed zoning ordinances or amendments and decide whether they intend to participate in a public hearing.

In this case, the first advertisement was published in the Washington Post on Saturday, December 2, 2023, and the advertisement referred the public to the office of the Clerk of the Board to view the proposed amendments and ordinances. The documents referenced were not available. The second advertisement ran on December 5, 2023, and again referred the public to the office of the Clerk of the Board to view the proposed amendments and ordinances. Despite this, the documents were still not available on that day either. It was not until December 7, 2023, that the proposed plans, ordinances and amendments were available to be examined. Va. Code §

[8] Counsel for the Defense posits that the locality is not required to make the "proposed plans, ordinances or amendments" available for public examination at any particular time because the statute does not explicitly say a timeline for "availability." To this end, they cite numerous statutes which provide a precise timeline for making documents "available" to the public, including the Virginia Freedom of Information Act and Va. Code § 15.2-107, and suggest they be read *in pare materia*. The Court finds this argument unconvincing because it is the very text and structure of Va. Code § 15.2-2204 which suggests that the "proposed plans, ordinances or amendments" must be available for review by members of the public during the notice period. *See Lucy v. County of Albemarle*, 258 Va. 118, 129–30 (1999) (noting that "in pari materia is only one rule of statutory construction among many" and that the true intent and meaning of the statute is "to be gathered by giving to all words used their plain meaning").

15.2-2204(A) requires that the public have at least two weeks' notice of the boards intention to adopt a plan or ordinance. The publication at issue did not give the public the opportunity to even read what the County was intending to adopt until five days prior to the hearing at issue. The County's failure to have the full text of the proposed ordinances they intended to adopt available for citizens to review does not comport with the plain text or intent of the advertised notice statutes and therefore violates Va. Code § 15.2-2204(A) and PWCZO § 32-700.60.

V. WAIVER OF RIGHT TO CHALLENGE THE VALIDITY OF THE PROCEEDING UNDER VA. CODE § 15.2-2204(B)

The Defendants in this case posit that the Plaintiffs waived their right to challenge the Board of County Supervisors' actions in this case because they either actively participated in the public hearing or had "actual notice." This affirmative defense is grounded in Va. Code § 15.2-2204(B), which states:

> A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

The statute plainly states that if a person has "actual notice of" a public hearing required by Va. Code § 15.2-2204 or they "actively participat[e]" in such a hearing, that person cannot challenge the validity of the proceedings based on their failure to receive written notice required by this section.[9] However, the Supreme Court of Virginia in *Norfolk 102, LLC v. City of Norfolk*, 285 Va. 340 (2013), and the Court of Appeals in *Drewry v. Board of Supervisors of Surry County*, 84 Va. App. 479 (2025), applied the waiver language to advertised notice defects as well. Following the analysis of these cases, if the Plaintiffs had actual notice, or actively participated in the proceedings, they cannot challenge the failure of the Board of County Supervisors to properly advertise or provide notice of what a rezoning entailed.

The evidence shows that three of the Plaintiffs did not actively participate in the proceedings.[10] As to the others that actively participated, they waive the right to challenge the validity of the proceedings. *See Norfolk 102*, 285 Va. at 357. In both *Drewry* and *Norfolk 102*, the plaintiffs in the case actively participated. While it is true that "active participation" in *Norfolk 102* came from representatives of the corporate plaintiffs, employees, and counsel, it should be

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[9] The parties in this case contest whether the actual notice waiver language in Va. Code § 15.2-2204(B) applies to advertised notices issued pursuant to Va. Code § 15.2-2204(A). Plaintiffs convincingly argue that the term "written notice" in Va. Code § 15.2-2204(B) refers solely to notices mailed under that same subsection, excluding the "advertised notice" described in Va. Code § 15.2-2204(A). Nonetheless, this Court is bound to follow the precedent of the Court of Appeals in *Drewry*, and accordingly applies the actual notice waiver provision to the Va. Code § 15.2-2204(A) challenges raised here.

[10] Three Plaintiffs with standing – the Oak Valley Homeowners' Association, Christopher Wall, and Stephanie Chartrand – actively participated in the December 12th hearing and waived their claims under Va. Code § 15.2-2204(B). Counsel for Plaintiff conceded that four other Plaintiffs with standing – Ms. Pyle, Mr. Jensen, Mr. Rohrer, and Mr. Bradshaw – had actual notice of the December 12th hearing. *See* Tr. Day 5.

noted that the plaintiffs in that case were corporations and as such could only participate via representatives.[11] The plain meaning of the statute indicates that only a *party* may waive their right to challenge a public hearing through active participation. Clearly Mr. Mirkes, Mr. Medina, and Mr. Donegan did not actively participate in the public hearing. That leaves the question of whether they had actual notice. This Court finds that they did not.

Virginia courts have found that plaintiffs had actual notice and waived any claim regarding advertised notice defects under Va. Code § 15.2-2204 in two cases. The first such case is *Norfolk 102*. In that case, the plaintiffs were two LLCs operating Bar Norfolk and Have a Nice Day Café, each of which served alcohol pursuant to a blanket special exception put in place in 1999. *See Norfolk 102*, 285 Va. at 344–48. In 2009, the city decided to repeal the blanket special exception and instead require each ABC-licensed business to obtain an individual special exception. *See id.* at 347. To allow the plaintiffs to prepare for the coming change, the city notified the managers of both restaurants of this plan in an April 2009 letter. *See id.* at 347–48. In response, the plaintiffs each submitted individual special exception applications. *Id.*

The City Council held a public hearing on August 18, 2009, at which it considered both revocation of the 1999 blanket special exception and the individual special exception applications of the plaintiffs. *See id.* at 348. The Supreme Court of Virginia noted that both plaintiffs were notified two weeks in advance of the date of the meeting at which the City Council would consider their special exception applications. *See id.* at 356.

The Supreme Court found that the plaintiffs in *Norfolk 102* "had actual notice *and* actively participated in the City Council meeting, thus waiving any challenge to the notice" based on Va. Code § 15.2-2204. *See id.* at 356–57 (emphasis added). Va. Code § 15.2-2204(B) provides that notice claims under that section are waived if the plaintiff had "actual notice of, *or* active participation in, the proceedings." (emphasis added).

In its analysis, the Court assessed numerous factors relevant to the Va. Code § 15.2-2204(B) waiver analysis. With regard to actual notice, the Court stated that "Bar Norfolk and the Café were notified two weeks in advance of the date of the meeting at which the City Council would consider their special exception applications." *See Norfolk 102*, 285 Va. at 356. Of note here, the Court mentioned that the meeting was to consider the plaintiff's special exception applications. *Id.* The businesses were the moving parties, so they clearly knew what they were asking for as far as a special use permit. They could not claim that they did not understand the proposed actions of the City because they were the party asking for the individual exception, and they did so in response to the County informing them the 1999 blanket special exception would be revoked. *See id.* at 347–48.

Since *Norfolk 102*, the Court of Appeals has only recently taken up the issue of actual notice under Va. Code § 15.2-2204(B) in *Drewry*. This case, which is currently on appeal to the

[11] Additionally, it should be noted that the plaintiffs in Norfolk 102 had actual notice. *See Norfolk 102*, 285 Va. at 356–57.

Supreme Court of Virginia, found that Plaintiff Michael Drewry waived complaints under Va. Code § 15.2-2204(A) and (B) based on his "actual notice of *and* active participation in" a public hearing. *See id.* at 490–91 (citing *Norfolk 102*, 285 Va. at 357) (emphasis added).

Here, Drewry complained of both inadequate advertised and mailed notice under Va. Code § 15.2-2204(A) and (B) for four different meetings: two meetings of the Surry County Planning Commission, and two meetings of the Surry County Board of County Supervisors. *See Drewry*, 84 Va. App. at 485–87. Of note here, Drewry himself was a member of the Board of County Supervisors. *See id.* at 486. Drewry went to the public hearing held by the Surry County Planning Commission in September 2022 and made public comments on the matter. *See id.* Following Drewry's comments, the Planning Commission tabled the conditional use permit and voted to take up the matter again in November 2022. *See id.* Drewry also attended and actively voted at both Board of County Supervisors meetings in January 2022 and June 2022, where this conditional use permit was raised. *See id.* at 486–87. After the conditional use permit was approved, Drewry filed suit alleging three issues that would render the approval void *ab initio*: (1) failure of the advertised notices for the September 2021 and January 2022 hearings to reference a physical place where interested persons could access relevant materials, as required by Va. Code § 15.2-2204(A); (2) failure to properly mail notices for all of the meetings, as required by Va. Code § 15.2-2204(B); and (3) failure of the Planning Commission to make a determination required by Va. Code § 15.2-2232. *See id.* at 487.

The Court of Appeals held that Drewry waived both of his notice challenges under Va. Code § 15.2-2204(B). [12] *Drewry*, 84 Va. App. at 491. Quoting *Norfolk 102* as the basis for its decision, the Court stated that "a party's 'actual notice of and active participation in' the challenged proceeding...waives any challenges to alleged deficiencies in the received notice." *See Drewry*, 84 Va. App. at 490–91 (citing *Norfolk 102*, 285 Va. at 357). Although the Court stated that Drewry "had both actual notice and an opportunity to be heard," it stated only facts relating to his active participation in the relevant proceedings. In particular, the Court highlighted how Drewry spoke at the September 2021 hearing and participated at the January and June 2022 hearings by voting as a Board member. *See id.* It is not surprising that Drewry was found to have actual notice because he was on the Board of County Supervisors, which was tasked with voting on the pending conditional use permits in the first place.

The plaintiffs in *Drewry* and *Norfolk 102* were both found to have actual notice and active participation. *See Drewry*, 84 Va. App. at 486–87; *Norfolk 102*, 285 Va. at 347–48. In this case, however, not all of the Plaintiffs actively participated in the public hearing in question. Mr.

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[12] Interestingly, although Drewry appealed the Circuit Court's finding that he did not have standing to sue under *Friends of the Rappahannock*, the Court of Appeals declined to address the standing issue, merely stating in a footnote that "even assuming that [Drewry] does [have standing], his statutory challenges are unavailing." *See Drewry*, 84 Va. App. at 489 n.4. The Court of Appeals cited *Grady v. Blackwell*, 81 Va. App. 58, 68 n.7, 902 S.E.2d 64 (2024), to justify this approach, but that case appeared to assume Grady's standing without making a decision on it because the standing issue was not "adequately briefed." *See Grady*, 81 Va. App. at 68 n.7. This note appears to suggest that standing was assumed more so because the objection was abandoned by counsel.

Mirkes, Mr. Medina, and Mr. Donegan all were not even present at the December 12th hearing. Thus, the waiver under Va. Code § 15.2-2204(B) would only apply if those three plaintiffs had actual notice of the hearing. *See* Va. Code Ann. § 15.2-2204(B).

To determine whether Mr. Mirkes, Mr. Medina, and Mr. Donegan waived their notice claims under Va. Code § 15.2-2204(B), the Court must find whether they had "actual notice." Use of the word "actual" suggests that the existence of notice sufficient to waive a claim under Va. Code § 15.2-2204(B) must exist in fact and be derived from a thorough review of the factual record. *See Easley v. Barksdale*, 75 Va. 274, 283–84 (1881); *Inv'rs Title Ins. Co. v. Bair*, 296 F. App'x 332, 334 n.1 (4th Cir. 2008) (citing *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (2006)) ("[A]ctual notice may be shown by direct evidence or inferred from factual circumstances."); *see also Buchanan v. City of Bogata*, 674 S.W.3d 687, 691 (Tex. App. 2023) (citing *Worsdale v. City of Killeen*, 578 S.W.3d 57, 66 (Tex. 2019)) ("When actual-notice evidence is disputed, a fact question arises."). Actual notice can further be understood by its contrast with constructive notice. The Supreme Court of Virginia held in *Easley v. Barksdale*, 75 Va. 274, 283–84 (1881):

> Notice is said to have been actual when it is directly and personally given to the party to be notified; and constructive, when the party is put upon inquiry, and must be presumed to have had notice or by judgement of law is held to have had notice. Notice to an agent of a fact which he does not communicate to his principal, when regarded in law as notice to the latter, is not as to him actual, but constructive notice.

Of note here, notice to an agent or counsel is not *actual*, but *constructive* notice to the principal. It is true that Kathleen McDermott, an attorney for the Plaintiffs, remotely watched or listened to parts of the December 12th hearing livestream. *See* Def. Ex. 46. The parties stipulated that Ms. McDermott and Mr. Blakely had actual notice of the hearing. *Id.*[13] However, this only puts the Plaintiffs themselves on *constructive* notice. The law as written in Va. Code § 15.2-2204(B) requires evidence of *actual* notice, which was lacking in this case.[14]

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[13] The stipulation also states that Ms. McDermott did not actively participate. *See* Def. Ex. 46.

[14] The Defendants similarly argued that Mr. Haddow, President of the Oak Valley Homeowner's Association, acted as a "representative" of those Plaintiffs living in the HOA, including Mr. Mirkes, Ms. Pyle, Mr. Donegan, and Mr. Wall. This argument likewise does not hold up under closer scrutiny. Officials elected to represent a homeowner's association are not agents of the residents living in their communities. *See* Va. Code § 55.1-1800 (defining a "property owners' association" as "n incorporated or unincorporated entity upon which responsibilities are imposed and to which authority is granted in the declaration"); *see also Tvardek v. Powhatan Vill. Homeowners Ass'n*, 291 Va. 269, 279 (2016) (noting that the legislature made property owners' associations and "add[ed] precautions to honor the common law's ancient antipathy toward restrictions on the free use of private property"). Indeed, the law itself expressly contemplates that homeowners may have interests distinct from their homeowner's association. *See* Va. Code § 55.1-1819(E) (permitting property owners' associations to retain counsel and bring enforcement actions against individual landowners residing in the association). Moreover, even if Mr. Haddow could somehow be construed as an agent of the HOA-resident Plaintiffs, there is no evidence suggesting that those Plaintiffs instructed him or authorized him to act on their behalf.

Another look at the facts of *Norfolk 102* and *Drewry* illuminates the meaning of "actual notice" in the context of Va. Code § 15.2-2204(B). The plaintiffs in both of these cases were in a position where they would have both awareness of the date, time, and location of the hearing and intimate knowledge of the substance of the applications, ordinances, or conditions up for consideration by the locality. *See Drewry*, 84 Va. App. at 486 (stating that Drewry was a member of the Board of County Supervisors); *Norfolk 102*, 285 Va. at 347–48 (describing how the City Council sent a letter to the plaintiffs advising of their intent to revoke the 1999 blanket special exception and recommending that plaintiffs apply for an individual special exception; the plaintiffs complied with that recommendation and submitted applications of their own creation, and even hired counsel to represent their interests in advance of the public hearing).[15]

The three plaintiffs that did not actively participate in the December 12th hearing all testified at trial and deposition testimony from all three was admitted into evidence. Mr. Donegan testified honestly and forthrightly that he did not know about the December 12th hearing. During his deposition, Mr. Donegan was shown emails sent to his email address from Mr. Wall regarding the Digital Gateway. He indicated that he never opened these emails because they got lost in his GMail account. He further stated that he gets hundreds of emails a day and, if they do not require immediate action, he does not review them. When confronted with the question of whether he would ignore an email forwarded to him by his wife, he said, without hesitating, that he would.[16]

This Court finds that Mr. Mirkes testified with candor, and notes that he even struggled to discuss some of his disabilities from prior military service. Mr. Mirkes testified that he did not know about the December 12th hearing, and he even stated in his deposition that he did not know there were rezoning applications pending until February of 2025. He explained at length the fact that he often works in a Sensitive Compartmentalized Information Facility where cannot access his electronics, so his wife always checks his email and informs him of anything important. No evidence showed that he read any emails, read any signs, or participated in any conversations regarding the rezoning of the Digital Gateway in advance of the December 12th hearing.

Mr. Medina presented as honest during his testimony at trial. He stated that he did not know of the December 12th hearing and he possessed very little knowledge about the Digital

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[15] Before either *Norfolk 102* or *Drewry*, the Supreme Court of Virginia considered the role of actual notice in a Va. Code § 15.2-2204 claim in *Gas Mart Corp. v. Board of Supervisors*, 269 Va. 334 (2005). In that case, the Supreme Court of Virginia held that the advertised notices provided pursuant to Va. Code § 15.2-2204(A) did not comply with the statute. *See id.* at 350. The advertised notices in that case failed to include an adequate descriptive summary of the proposed action and a description of the areas to be affected. *See id.* at 345–47. Of note here, the advertised notice was found defective despite the fact that a notice letter was mailed to "each of approximately 64,000 County landowners." *See id.* at 339. The fact that the Court did not find actual notice waived the plaintiffs' notice claims in that case supports the understanding that "actual notice" extends beyond mere receipt of a document containing information about a public hearing.

[16] When confronted about the signs placed near the Digital Gateway to advertise the time and location of the meeting, Mr. Donegan indicated that he saw the similar signs on Linton Hall Road, but the signs relevant to this case were not placed along Linton Hall Road. The Court also attributes minimal weight to evidence introduced regarding signage advertising the December 12th hearing, as there was no compelling testimony showing that any party was actually able to read those signs.

Gateway rezonings. Mr. Medina indicated that he did not have internet and did not regularly communicate with any of his co-Plaintiffs in this case. He further stated that he only spoke to his lawyers on three occasions – none of which were in advance of the December 12th hearing. The evidence presented by Defendants indicated that a public hearing notice was mailed to Mr. Medina's home, but there was no evidence that he received that notice.

Accordingly, this Court finds neither that Mr. Donegan, Mr. Mirkes, nor Mr. Medina had actual notice of or actively participated in the December 12th hearing. Therefore, neither Mr. Donegan, Mr. Mirkes, nor Mr. Medina waived their right to challenge the Board of County Supervisors' approval of the Digital Gateway rezonings under Va. Code § 15.2-2204(B).[17]

VI. CONCLUSION

Having found that the advertised notice provided by the County did not comply with either Va. Code § 15.2-2204(A) or PWCZO § 32-700.60, the "savings clause" of Va. Code § 15.2-2204(A) does not apply, and the plans, ordinances or amendments referenced by the advertised notices were not properly made available to the public; this Court finds that the Board of County Supervisors' approval of Rezoning #REZ2022-00036 (Ord. No. 23-57), Rezoning #REZ2022-00033 (Ord. No. 23-58), and Rezoning #REZ2022-00032 (Ord. No. 23-59), is void *ab initio*. An appropriate order is attached.

The Honorable Kimberly A. Irving,
Judge, 31st Judicial Circuit of Virginia

[17] For purposes of this analysis, the Court reiterates that while there are three separate zoning ordinances at issues, the evidence showed that the Digital Gateway rezonings are highly interdependent. Accordingly, this Court finds that Mr. Donegan, Mr. Mirkes, and Mr. Medina may maintain their challenges to the whole Digital Gateway rezoning approved at the December 12th hearing.