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Via Email

November 30, 2023

Michelle Robl, Esq.
County Attorney
Prince William County
1 County Complex Court
Prince William, VA 22192

Re: December 12, 2023 Public Hearing on REZ 2022-00036 for H&H Capital Acquisitions, LLC

Dear Michelle:

Our firm represents H&H Capital Acquisitions, LLC (the “Applicant”) in the above-referenced zoning application (the “Application”). We understand that on November 20, 2023, representatives of Prince William County (“PWC”) timely transmitted to The Washington Post a legal notice to advertise a planned December 12, 2023, public hearing on the Application (the “Advertisement”). In that transmission, PWC requested that the Advertisement be published in The Washington Post on November 28, 2023 and December 5, 2023, respectively. The Washington Post thereafter failed to publish the Advertisement on November 28 as requested by PWC. The failure to publish was discovered by PWC on November 30 and immediately brought to the attention of The Washington Post. In response, The Washington Post intends to publish the Advertisement on December 2, 2023, which is the next available edition of the newspaper in which the Advertisement can be published. We understand The Washington Post also intends to publish the Advertisement on December 5, 2023 and December 9, 2023.

Under Section 15.2-2204(A) of the Code of Virginia, which the 2023 Virginia General Assembly amended earlier this year with an effective date of July 1, 2023, a governing body 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 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.” Given the facts outlined above, the planned schedule for publication of the Advertisement in The Washington Post meets the requirements of Va. Code Section 15.2-2204(A). The Advertisement will be published once a week for two successive weeks, with the first notice appearing not more than 14 days ahead of the December 12th hearing. That is all State Code requires.

Even if the failure of The Washington Post to publish the Advertisement as requested could have created a potential concern, Va. Code Section 15.2-2204(A) further states that “[i]n any instance in which a locality has submitted a correct and timely notice request to [a newspaper published or having general circulation in the locality] 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 [such newspaper]” (emphasis added). The purpose of the preceding code reference is to acknowledge that the actual publication of a public hearing advertisement rests not with the locality but with the newspaper itself, provided the locality requested the notice’s publication in a timely manner. Accordingly, a newspaper’s failure to publish a properly-requested public hearing notice does not affect or diminish the authority of the locality to conduct the public hearing as scheduled.



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Therefore, even if there was concern, the protections afforded PWC under Section 15.2-2204(A) clearly apply in this circumstance. PWC timely submitted a correct and timely notification to The Washington Post for publication on November 28, 2023. The Washington Post failed to publish the Advertisement on November 28, 2023 but agreed to publish the Advertisement in the next available edition in which it can be published, which is December 2, 2023. As a result, the planned December 12, 2023 public hearing may proceed as scheduled.

We also note that Section 32-700.60(1) of the Prince William County Zoning Ordinance ("ZO") is inconsistent with Va. Code Section 15.2-2204 concerning the notice requirements for zoning and many other applications for which a public hearing is required. Not only does the ZO fail to include the "savings clause" afforded PWC in Va. Code Section 15.2-2204(A) and quoted above, there also is a conflict in the dates on which the notices must be published in the applicable newspaper (among others). While we understand PWC has a pending amendment to its ZO to address these conflicts, the provisions of Va. Code Section 15.2-2204(A) take precedence over any conflicting provisions in the ZO.

For the reasons set forth above, the Applicant requests that PWC proceed with the public hearing on REZ 2022-00036 as planned for December 12, 2023.

Sincerely

A handwritten signature in black ink that reads "Mark Looney".

Mark C. Looney

MCL

cc: Chris Curtis, Compass Datacenters
Jonelle Cameron, Esq., WCLEL
Matt Westover, Esq., WCLEL
Alan Smith, Esq., Prince William County