

August 22, 2025

Jacqueline C. Smith, Clerk
Prince William County Circuit Court
9311 Lee Avenue
Third Floor
Manassas, VA 20110

VIA ELECTRONIC AND STANDARD MAIL

Re: Oak Valley Homeowners Association et.al v Board of County Supervisors, Prince William County
et. al.
Case No. CL24-375

Dear Ms. Smith:

Enclosed for filing, please find the Memorandum in Support of the Board of County Supervisors' Motion to Stay by GW Acquisition Co. LLC and GW Acquisition Co. I, LLC , in the above matter. If there are any questions, please do not hesitate to contact me.

Sincerely,

Stinson LLP

Michael Tucci

MET:snr

CC:

Sent via electronic mail to the following:

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VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

OAK VALLEY HOMEOWNERS)
ASSOCIATION, INC., et al.)
)
Plaintiffs,)
)
v.) Case No. CL24-375
)
BOARD OF COUNTY SUPERVISORS,)
PRINCE WILLIAM COUNTY, et al.,)
)
Defendants.)

GWA’S MEMORANDUM IN SUPPORT OF THE BOARD OF COUNTY SUPERVISORS’ MOTION TO STAY

GW Acquisition Co., LLC and GW Acquisition Co. I, LLC (together, “GWA”) respectfully submit this brief in support of the Board of County Supervisors of Prince William County’s (the “Board”) Motion to Stay Judgment Pending Appeal and Suspend the August 7 Order (the “Motion to Stay”).

GWA agrees with the Board that the August 7 Order is not a final, appealable order pursuant to Rule 1:1.¹ Additionally, GWA agrees with the Board that the August 7 Order, which incorporates the Court’s August 7 Letter Opinion, should be stayed during the pendency of all appeals to the Court of Appeals of Virginia and, if necessary, the Supreme Court of Virginia.

¹ On August 21, as directed by the Court in its August 7 Order, GWA filed objections to the August 7 Order. GWA also joins in and explicitly adopts the objections to the August 7 Order filed by the County on August 21. Because the August 7 Order is not a final, appealable order, however, GWA does not believe it needs to be suspended. Instead, this Court should enter a final, appealable order that allows the Defendants to appeal by right to the Court of Appeals of Virginia.

I. The Court Has Broad Discretion to Stay its August 7 Order

Pursuant to Virginia Supreme Court Rules 1:1 and 1:1B(a)(3), the Court retains jurisdiction to stay a final order pending appeal. This Court also has the inherent authority to stay enforcement of its own orders. The Supreme Court of Virginia has described such authority as “incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Primov v. Serco, Inc.*, 296 Va. 59, 67 (2018) (quoting *Landis v. North Am. Co.*, 299 U.S. 248, 254-55 (1936)). Thus, “the decision whether to grant a motion to stay pending appeal is a matter of discretion.” *Washington Gas Light Co. v. Zinner*, CL-2022-2942, 2024 WL 5454685 at *4 (Va. Cir. Ct. Feb. 14, 2024) (citing *Qiu v. Huang*, 11 Va. App. 304, 327 (2023)).

While neither the Supreme Court nor the Court of Appeals have articulated the standard to be used to grant a stay, other Virginia circuit courts have found the following factors instructive in determining whether to stay enforcement of a final order:

(1) the nature and circumstances of the case at bar, (2) the likelihood of irreparable harm if no stay is issued ... (3) the veracity and magnitude of the asserted harms resulting from not granting a stay, and (4) consideration of where the public interest lies[.]

Zinner, 2024 WL 5454685 at *4 (internal citations omitted). Here, all four of the *Zinner* factors weigh in favor of staying the Court’s August 7 Order.

II. The Nature and Circumstances of This Case Support a Stay

This case involves the Board’s approval of three Rezoning Ordinances,² providing for the eventual redevelopment of over 1,700 acres of agricultural land to industrial uses suitable for data center operation. Def. Ex. 40 at 1, Ex. 41 at 1, Ex. 42 at 1. The Board approved the Rezoning

² Ord. No. 23-57 (#REZ2022-00036, Compass Datacenters Prince William County Campus 1) (“**Compass**”); Ord. No. 23-58 (#REZ2022-00033, Digital Gateway South) (“**DG South**”); and Ord. No. 23-59 (#REZ2022-00032, Digital Gateway North) (“**DG North**”) (collectively, the “**Rezoning Ordinances**”).

Ordinances after a 29-hour public hearing during which the Board heard 17 hours of public comment. See Pl. Ex. 18 at 6:47:00-23:50:00. In those 17 hours, the Board heard testimony from members of the community both in support of and in opposition to DG North, DG South, and Compass. Immediately unwinding that complex and sensitive regulatory decision—and all of the dominoes that follow from it—without allowing the appellate courts an opportunity to weigh in risks significant disruption for the County, GWA, and many others impacted by this suit. And the “significant dispute” over the Board’s legislative decisions to approve the Rezoning Ordinances alone counsels in favor of a stay. *Zinner*, 2024 WL 5454685, at *4.

The consequences of the Court’s order voiding the Rezoning Ordinances are far-reaching. In addition to rendering the Rezoning Ordinances void *ab initio*, the Court’s ruling implicates the Board’s authority to oversee rezoning matters within its jurisdiction, including the authority to manage its own internal procedures in preparing legislative material for its public hearings. Relatedly, the ruling impacts the County’s authority to exercise powers dependent on the Board’s decision approving the Rezoning Ordinances, including valuation and assessment of property taxes. Of course, the ruling also impacts GWA and the continued viability of its investments.

Following the Court’s August 7 Order, there are now conflicting rulings on the validity of the Rezoning Ordinances—and specifically the validity of the notice provided in advance of the relevant hearing—in two parallel cases coming out of the same court. See Final Order, *Burke, et al. v. Bd. of County Supervisors, et al.*, No. CL24-334 (Prince William Cty. Cir. Ct. Oct. 31, 2024). In *Burke*, the court dismissed Plaintiffs’ claims challenging the Board’s approval of DG North, DG South, and Compass with prejudice, rejecting Plaintiffs’ notice arguments and denying the precise relief this Court granted in declaring the Rezoning Ordinances void *ab initio*. *Id.* The *Burke* decision

is on appeal and the matter is now fully briefed to the Court of Appeals.³ Thus, the Court of Appeals will soon review and opine on the merits of many issues decided by this Court in its August 7 Order, creating the risk of further inconsistent rulings. This too reinforces the wisdom of preserving the status quo pending resolution of these twin cases through the appellate process.

The nature of this case makes a stay appropriate. The August 7 Order affects the rights of multiple parties and conflicts with existing precedent. A stay is thus appropriate to preserve the status quo pending resolution of the appellate process.

III. GWA is Likely to Suffer Irreparable Harm Absent a Stay

GWA is likely to suffer irreparable harm absent a stay of the Court’s August 7 Order. As the Board described in its Motion to Stay, the County may be forced to complete reassessments and face “unnecessary enforcement actions if Defendants are ultimately successful on appeal.” Motion to Stay, p. 4, ¶ 6. GWA also has additional rights—both economic and in the rezoned property—that will likewise be impaired absent a stay.

The rezoning process for DG North and DG South began in earnest in 2021. Since then, GWA has invested significant capital into developing its rezoning proposals, securing the necessary contracts and government approvals, and working with the County and its planning staff to ensure the proposals met the necessary requirements for approval. As the evidence at trial made clear, this involved years of work, resulting in over five separate submissions to the County detailing the proposed developments, studies procured from multiple government and related agencies, and proffers aimed to mitigate all issues related to the proposed development (including environmental constraints analyses, noise mitigation measures, viewshed analyses, and others addressing

³ As the Court is also aware, the Supreme Court of Virginia is considering whether to grant review of *Drewry v. Board of Supervisors of Surry County*, 84 Va. App. 479 (2025). See SCV Record No. 250446. The Court of Appeals affirmed *Zinner* on July 1, 2025, see 85 Va. App. 220 (2025), and it does not appear that case was appealed to the Supreme Court.

sustainability, environmental, cultural, architectural, and related concerns). *See generally* Pl. Exs. 16-17. Despite the *Burke* decision affirming the validity of the Rezoning Ordinances, GWA's investments may now be rendered meaningless absent a stay of the August 7 Order while appeals are ongoing.

In reliance on the Board's approval, GWA has taken additional steps to prepare for construction. For example, GWA has obtained at least one state permit allowing for the development of various buildings and electric substations in DG South. GWA has completed additional pre-development work, including, for example, commissioning surveys of the rezoned property, resolving title issues, engineering planned infrastructure and utilities, and other due diligence necessary to prepare for site development. Virginia courts demonstrate a willingness to protect similar investments made in reliance on legislative approval of a particular land use, evidenced through the well-established vested rights doctrine. The Virginia Supreme Court describes vested rights as "property right[s] ... created and protected by law." *Bd. of Supervisors of Stafford Cty. v. Crucible, Inc.*, 278 Va. 152, 157 (2009). Vested rights "protect a landowner's right to develop a specific project under existing zoning conditions and allow continuation of the non-conforming use when that zoning designation is amended or changed." *Bd. of Supervisors v. Greengael, L.L.C.*, 271 Va. 266, 282 (2006).

Virginia's protection of vested rights extends to its statutes. The General Assembly has codified elements of the common law doctrine through Va. Code §§ 15.2-2307 and 15.2-2311, ensuring vested rights are not disturbed by "a subsequent amendment to a zoning ordinance" (§ 15.2-2307) or when a "person aggrieved has materially changed his position in good faith reliance on the action of the zoning administrator or other administrative officer" (§ 15.2-2311). Described as a remedial statute, section 15.2-2311 is "intended to eliminate the hardship property owners have suffered when they rely to their detriment upon erroneous or void zoning decisions."

Bd. of Supervisors of Prince Edward Cty. v. Bowman, No. 0490-23-2, 2025 WL 1033993, at *4 (Va. Ct. App. Apr. 8, 2025) (quoting *Bd. of Supervisors of Richmond Cty. v. Rhoads*, 294 Va. 43, 51 (2017)). For this reason, vested rights under Virginia law should be “liberally construed so that the purpose intended may be accomplished.” *Id.* In the time since the Board approved the Rezoning Ordinances, GWA has taken substantial steps to prepare for the future development of that rezoned property and made significant investments in furtherance of those efforts. This pre-development work is ongoing and requires preservation of the zoning classifications to continue. Thus, even if GWA is successful in appealing the Court’s order, it stands to lose these investments in the interim. The same principles that animate the vested rights doctrine animate the need for a stay in this case. Preserving the validity of the Rezoning Ordinances pending the outcome of a future appeal prevents the irreparable harm GWA is sure to suffer without it.

On the other hand, Plaintiffs will not suffer irreparable harm if the Court stays its order. The status quo—and the one Plaintiffs have been living with for over 20 months—is the valid and approved Rezoning Ordinances. Preserving this status quo until any appeal has been finally resolved will eliminate the confusion arising out of inconsistent rulings, multiple appeals, and the resulting uncertainty caused by both.

IV. Given the Certainty of an Appeal, the Veracity and Magnitude of Asserted Harms Require a Stay

As recognized in this case, *Burke, Drewry*, and other zoning disputes, this Court will not be the last word in resolving Plaintiffs’ claims given the impact of the relief they seek and the magnitude of the issues presented. *See* Tr. Day 3 at 234:18-21 (the Court stating “[a]nd we have said multiple times I recognize that this case is large. And I am very likely not the last voice to deal with that, but I want the record to be very clear.”); Jan. 30, 2025 Hearing at 35:21-22 (“I recognize, no matter what I do, I’m not the final voice on this.”); at 139:6-8 (“As I said, no matter what I do on March 6th, I’m not the end voice on this, and we all know that.”).

This case also presents complex legal issues, some of which appear to be issues of first impression. For example, GWA is aware of no precedent considering separate legislative land use actions as one for the purposes of standing. *Let. Op.* at 5, n.4. Similarly, no Virginia court has invalidated a notice scheme based on a locality's purported failure to make certain materials available for public review on the first day of advertised notice required under Va. Code § 15.2-2204(A). *Id.* at 12-13. These and many other issues make a stay of the Court's void *ab initio* ruling particularly appropriate. *See Zinner*, 2024 WL 5454685, at *4 ("The Court is confident in its October 12, 2023, judgment, but retains sufficient humility to recognize that reasonable judicial minds may differ.").

V. The Public Interest is Served by a Stay Preserving the Validity of the Rezoning Ordinances Pending Appellate Review

The public interest is well-served by a stay of the Court's August 7 Order. As a preliminary matter, the Board requested a stay pending appeal, which the *Zinner* court found provided evidence its stay order was in the public's interest. *Zinner*, 2024 WL 5454685 at *4 ("The elected Board of Supervisors is a good source for divining the public interest since Supervisors answer to the public."). Additionally, the Rezoning Ordinances at issue were approved by the members of the Board – elected by the citizens of Prince William County. The public, along with the Board, therefore has an interest in preserving these legislative decisions reached by its duly-elected officials. Although Plaintiffs challenge the effectiveness of those decisions based on alleged statutory notice violations, their notice claims are not made on a class-wide basis, and they cannot vindicate a procedural right of any other member of the community. *Drewry v. Bd. of Supervisors of Surry Cty.*, 84 Va. App. 479, 492 (2025) ("Code § 15.2-2204 does not create a private right of action independent of a violation of the claimant's own notice rights."). Indeed, of the hundreds of thousands of citizens residing in Prince William County, only twelve decided to challenge the Board's actions in this case.

Moreover, as the Board notes, a stay will help prevent further citizen confusion arising out of inconsistent rulings from the same court. This confusion might manifest in disputes regarding tax assessments, potentially subjecting the County to enforcement actions that later might be rendered moot. Thus, the public interest in preserving government resources and promoting efficiency likewise weighs in favor of a stay.

II. CONCLUSION

For the foregoing reasons, GWA asks the Court to grant the relief sought in the Board's Motion to Stay and stay the enforcement of any modified final order complying with the requirements of Rule 1:1(b) until the time that any appeals of such order have been finally resolved.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 22, 2025 a true and correct copy of the foregoing was served, via e-mail and First-Class Mail, postage prepaid, on the following:

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