
In the
Supreme Court of Virginia

Record No. _____

GW ACQUISITION CO., LLC, and GW ACQUISITION CO. I, LLC,
Petitioners – Defendants,

v.

KATY BURKE, *et al.*,
Respondents – Plaintiffs.

PETITION FOR APPEAL FROM THE COURT OF APPEALS

From the Court of Appeals of Virginia, Record No. 2025-24-4 &
From the Circuit Court for Prince William County, Case No. CL24-334

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INTRODUCTION

This case involves the Court of Appeals’ unprecedented nullification of various Prince William County rezoning amendments that would have brought tens of billions of dollars in investment—and thousands of jobs—to Virginia. In a decision resolving two sets of cases, the Court of Appeals rejected the rezonings by mistakenly finding a violation of highly technical notice provisions that harmed no one. See *Bd. of Cnty. Supervisors of Prince William Cnty. v. Oak Valley Homeowners Association, Inc.* (“*Oak Valley I*”), CAV Record Nos. 1584-25-4, 1590-25-4, and 1592-25-4; *Burke v. Bd. of Cnty. Supervisors of Prince William Cnty.*, CAV Record No. 2025-24-4. Petitioners GW Acquisition Co., LLC, and GW Acquisition Co. I, LLC (collectively, “GWA”) have filed a separate petition for review seeking reversal in *Oak Valley II*. Petitioners respectfully submit this Petition for Appeal in *Burke* pursuant to Rule 5:17, asking this Court to grant review and reverse the Court of Appeals’ decision in *Burke* based on any potential reversal in *Oak Valley II*.¹

For nearly a decade, Prince William County has been working to draw technology investment into the Commonwealth. In 2022, the County officially unveiled amendments to its Comprehensive Plan authorizing the development of a

¹ The Court of Appeals addressed both *Oak Valley II* and *Burke* in one opinion, but it did not formally order the two cases combined.

new technology corridor in northern Virginia called the “Digital Gateway.” Public engagement was substantial. After a 2-day, 14-hour hearing at which about 240 members of the public presented, the Prince William County Board of Supervisors (the “Board”) approved the amendments. A group of plaintiffs unsuccessfully sued to overturn that decision. That pattern repeated itself in 2023, when two developers sought rezoning approvals to construct data centers in the Digital Gateway. After a marathon, 27-hour public hearing the Board again approved the rezonings. Once more, two different groups of plaintiffs sought to undo that legislative process through separate litigation.

This time the Court of Appeals ultimately agreed, unwinding a decade’s worth of investment in the Digital Gateway. As relevant here, the Court of Appeals held that (1) the Circuit Court should not have sustained Defendants’ demurrer in *Burke*, and (2) its own ruling in *Oak Valley II* mooted “the need to remand *Burke* for further proceedings in the trial court.” Op. at 52. The Court of Appeals did not address the other issues presented in *Burke*, including the assignments of cross-error raised by GWA.

If the Court grants review in *Oak Valley II*, it should also grant review in *Burke*. As noted, the Court of Appeals’ reversal in *Burke* rested entirely on its analysis of *Oak Valley II*. If this Court overturns that *Oak Valley II* ruling, reversal should follow as a matter of course in *Burke*.

ASSIGNMENT OF ERROR

1. The Court of Appeals erred in entering judgment for Plaintiffs and finding *Burke* moot based on its resolution of *Oak Valley II*.²

FACTUAL AND PROCEDURAL BACKGROUND

I. The Digital Gateway Rezonings

Prince William County amended its zoning ordinance nearly a decade ago to allow for the construction of data centers in the County. *See Oak Valley Homeowners Assoc., Inc. v. Prince William Cnty. Bd. of Supervisors*, 85 Va. App. 382, 386-87 (2025) (“*Oak Valley I*”). Over the years, the County has commissioned several studies to assess the economic impact of these developments.³ These studies report that data centers contribute millions in new revenue to the County, create thousands of new, high-paying technology jobs as well as construction-related employment, and require few public resources in return. In 2024, for example, data centers generated \$293.7 million in tax revenue for Prince William County alone.⁴

² This was preserved at CAV GWA Br. Appellee; CAV GWA Reply Br.; Oral Argument Tr. at 1:31-1:32:43. Because the Court of Appeals raised the mootness issue *sua sponte*, it was not briefed by the parties below. *See also* CAV Slip Op. in *Oak Valley II* and *Burke*.

³ *See, e.g.*, Prince William County, *Virginia Data Center Fiscal Impact Analysis* (July 7, 2022), https://www.pwcva.gov/assets/2022-07/Data%20Center%20Fiscal%20Impact%20Analysis_6.30.22_lock.pdf.

⁴ *See, e.g.*, Prince William County, *Data Center Industry | Tax Revenue Report*, <https://www.pwcva.gov/assets/2025-06/Prince%20William%20County%202024%20Data%20Center%20Revenue%20Report.pdf>.

In July 2022, the Board released a draft of an amendment to its Comprehensive Plan to create the “Digital Gateway,” a new data center development. *Oak Valley I*, 85 Va. App. at 386–87. In November 2022, the Board adopted this Comprehensive Plan Amendment (“CPA”) after analysis and a 14-hour public hearing where over 200 community members spoke for and against the CPA. *Id.* After that hearing, nearly all of the current *Oak Valley II* Plaintiffs brought their initial challenge to the Board’s action in the litigation that became *Oak Valley I*.

The challenge to the CPA ultimately failed. Unable to argue that the Board failed to give proper notice, the plaintiffs in that first litigation challenge to the Digital Gateway claimed instead that the Board “failed to ‘listen to and consider the comments made at the public hearing[.]’” *Oak Valley I*, 85 Va. App. at 392. The Circuit Court rejected that claim, and the Court of Appeals affirmed, holding that the purported requirement “cannot be found in the text of the statute, cannot be squared with controlling precedent, and would be impractical to administer.” *Id.* at 394. This Court refused the plaintiffs’ petition for appeal. *See* Op. 6 (citing SCV Record No. 250772 (Dec. 23, 2025) (order)).

In the meantime, in 2022, GWA and H&H Capital Acquisitions, LLC (“Compass”), had submitted three separate applications to the Board seeking to amend the County’s zoning map to authorize the construction of three data center complexes in the Digital Gateway. In its two applications, for Digital Gateway

South (“DG South”) and Digital Gateway North (“DG North”), GWA offered dozens of conditions to mitigate potential impacts of their respective developments on surrounding communities. These conditions—known as “proffers”—established noise limits, limited building height, restricted the allowable hours of construction, preserved tree buffers and established new ones, required efforts to minimize dirt and debris caused by construction, and limited the routes on which construction vehicles could travel. *See, e.g.*, R.66972–67029; 66336–98. In total, the three rezonings represented between \$40 and 50 billion in economic investment to Prince William County. R.53898.

In November 2023, the Board scheduled a hearing on all three rezonings for December 12, 2023. The County then began efforts to notify the public of the hearing. On November 20, 2023, a County clerk submitted a request to *The Washington Post*, directing the *Post* to publish two advertisements on November 28 and December 5. R.850-52; 68027. But the *Post* did not publish the ads as initially requested, and agreed instead to publish three ads: one on Saturday, December 2, 2023; one on Tuesday, December 5, 2023 (as originally requested); and one on Saturday, December 9, 2023. R.60 ¶ 249. In addition to these advertisements, the Board mailed notices to nearby property owners and posted hundreds of signs at regular intervals on the main roads bordering the land subject to the rezoning. *See* R.34160 (sign posting affidavit for DG North); R.34161 (written notice affidavit for

DG North); R.53666 (written notice affidavit for DG South); R.53069 (sign posting affidavit for DG South); R.12555 (sign posting affidavit for Compass).

The advertisements mirrored the language of the proposals ultimately passed by the Board. Each said that the applications would rezone “agricultural” areas to “planned business” areas to allow for construction of “data centers” and identified, among other things, the relevant parcels and acreage. R.67115-18 (capitalization altered). The advertisements also stated that additional “[a]ll meeting materials” would be “posted online when the agenda is published” and that “a copy of all staff reports, proposed resolutions and ordinances, and other documentation” would be available for public review in the Board’s Clerk’s office. R.67116; *see also* R.67040-67050.

The hearing before the Board took place on December 12, 2023, as scheduled, but extended overnight and into December 13. R.6, 59. In total, it lasted more than 27 hours, with 17 hours of public testimony. R.6. At the conclusion of this marathon hearing, the Board approved each of the three rezonings by a 4-3 vote, with one member abstaining. R.82, 285, 357.

II. The Rezoning Litigation

A. The Circuit Court Proceedings in *Burke*

On January 12, 2024, the *Burke* Plaintiffs challenged the rezonings in the Prince William County Circuit Court. R.1.⁵ Styled as a “Petition to Overturn Action by Board of Supervisors,” R. 1, the *Burke* complaint contained ten counts. R.63-77. The parties in *Burke* consented to the inclusion of the legislative record of the proceedings before the County and the Board (the “Legislative Record”). R.956-62. The entire 66,000-page Legislative Record was thereby incorporated into the complaint filed by the *Burke* Plaintiffs. R. 983-67029.

GWA and the other defendants demurred. R.67040-51 (GWA’s Demurrer); R.67052-60 (H&H’s Demurrer); R.67063-67069 (Board’s Plea in Bar); R.67070-67113 (Board’s Demurrer and Motion to Dismiss). After the issues were fully briefed, the trial court held a hearing in October 2024. *See* R.67877-68031 (transcript from hearing).

On November 19, 2024, the trial court entered a Final Order, which incorporated the transcript of the trial court’s oral ruling on October 31, 2024. R.67824-67846. The trial court sustained the demurrers as to every count. R.67824. It focused on Count IX, which alleged that the advertisements published on

⁵ The *Oak Valley II* plaintiffs also filed their challenge to the rezonings on January 12, 2024.

December 2, 5, and 9 were published on the wrong dates and so could not satisfy Code § 15.2-2204(A) or PWCZO § 32-700.60. R.67838-40. With respect to that Count, the trial court determined that the *Burke* Plaintiffs had alleged a failure to “strictly comply” with the timing requirements of the local ordinance. R.67840 at 9:1-2. But, the trial court held that the “safe harbor provision” in Code § 15.2-2204 was satisfied because, based on the Legislative Record, the Board had requested that the *Post* run the advertisements and it was the *Post* that failed to do so. R.67841 at 10:4-19. The trial court held that the Code’s safe harbor provision had to be read into the local ordinance because “[a]n Ordinance may not authorize what a statute has forbidden and forbid what the Legislature has . . . authorized, or required.” R.67840 at 9:19 to R.67841 at 10:6.

In endorsing the Final Order, GWA noted objections to the trial court’s failures to sustain its demurrers on other grounds. R.67828.

B. The *Burke* Briefing in the Court of Appeals

The *Burke* Plaintiffs appealed.⁶ In their Opening Brief in the Court of Appeals, the *Burke* Plaintiffs assigned thirteen errors to the trial court’s Final Order. *See* Plaintiffs’ CAV Br. Appellants at 3-5 (April 28, 2025). In their Brief of

⁶ The *Burke* appeal was fully briefed in the Court of Appeals before the trial court in *Oak Valley II* conducted its trial and entered its final order. As discussed herein, and in GWA’s Petition for Appeal in *Oak Valley II*, the circuit court in *Oak Valley II* disagreed with the circuit court in *Burke* and voided the rezonings based on allegedly defective notice.

Appellees, GWA and Compass assigned three cross-errors, *see* Developers' CAV Br. Appellee at 3-4 (May 28, 2025), and noted that the *Burke* Plaintiffs failed to preserve and/or brief at least five of their assignments of error, including one (Assignment of Error 4, regarding a challenge to the advertisement by the Board and the availability of materials) that was raised for the first time on appeal, *see id.* at 7-13. The *Burke* Plaintiffs conceded this in the opening words of their Reply Brief, but the decision by the Court of Appeals fails to mention this concession, or of any of the other arguments not preserved on appeal by the *Burke* Plaintiffs. *See* Plaintiffs' CAV Reply Br. Appellants at 1 (June 11, 2025).

Also, prior to oral argument before the Court of Appeals, counsel for the *Burke* Plaintiffs moved to dismiss with prejudice five plaintiffs as plaintiffs/appellees in the appeal and litigation. *See* CAV Motion to Dismiss Certain Appellants as Parties Herein (Jan. 28, 2026).⁷ On January 29, 2026, the Court of Appeals granted the request and referenced this dismissal in its opinion in *Burke and Oak Valley II*. *See* Op. at 3, n.3. Accordingly, only Katy Burke, Liam Burke, Carol Czarkowski, Wanda Sabin, and the American Battlefield Trust remained as Plaintiffs in *Burke* as of the time of the March 31, 2026 Opinion by the Court of Appeals.

⁷ The reasons given for their voluntary withdrawal from the case varied.

C. The Decision of the Court of Appeals in *Oak Valley II* and *Burke*

After coordinating *Burke* and *Oak Valley II* for argument, the Court of Appeals heard both cases on February 24, 2026. On March 31, 2026, the Court of Appeals issued a combined ruling in both appeals.

In *Burke*, the Court of Appeals summarily reversed the trial court in a little more than a page of analysis. Based on one portion of its ruling in *Oak Valley II*, the Court of Appeals held that the trial court “erred in sustaining the demurrers to the Burke plaintiffs’ deficient-advertising claims, which were the same as those raised by the Oak Valley Plaintiffs.” Op. at 51. And it further held that the trial court had erred in resolving a factual dispute about the applicability of the “savings clause” in Code § 15.2-2204(A) on demurrer without “view[ing] the facts in the light most favorable” to the plaintiffs. Op. at 52. The Court of Appeals, however, did not address any of the other issues presented in the *Burke* appeal—including GWA’s assignments of cross-error—and instead concluded that its ruling in *Oak Valley II* “moots the need to remand *Burke* for further proceedings in the trial court.” Op. at 52. The Court of Appeals entered final judgment for the *Burke* Plaintiffs. Op. at 52-53.

STANDARD OF REVIEW

The review of a demurrer ruling by a trial court is a question of law subject to de novo review. *Glazebrook v. Bd. of Supervisors*, 266 Va. 550, 554 (2003).

Whether a case is moot also is a question of law subject to de novo review. *Handberg v. Morgan Ctr. & N.Va. Counseling Servs.*, Record No. 210780, 2022 Va. Unpub. LEXIS 15, at *5-*6 (Va. Dec. 8, 2022); *see also Rebh v. Cnty. Bd. of Arlington Cnty.*, 303 Va. 379, 380-381 (2024).

ARGUMENT

I. Review and Reversal by this Court in *Oak Valley II* Requires Review and Reversal in *Burke* (AE 1)

The Court of Appeals’ decision in *Burke* depended entirely on its decision in *Oak Valley II*, which challenged the same rezonings based on nearly identical notice defects. The Court of Appeals ultimately dismissed *Burke* as moot because its decision in *Oak Valley II* voided the rezonings and gave the *Burke* Plaintiffs all requested relief. Op. at 51-53. As the Court of Appeals explained, “the *Burke* plaintiffs’ deficient-advertising claims . . . were the same as those raised by the *Oak Valley* plaintiffs.” *Id.* at 51. Continuing, the Court of Appeals held that its “ruling in the [*Oak Valley II*] appeals invalidating all three rezonings moot[ed] the need to remand *Burke* for further proceedings in the trial court.” *Id.* at 52. And thus “in view of [the Court] affirming the judgment” in *Oak Valley II*, the Court of Appeals “likewise enter[ed] final judgment in *Burke*.” *Id.* at 53.

In *Oak Valley II*, GWA has explained why the Court of Appeals’ ruling in that case is mistaken and should be reversed. *See* Petition for Appeal, *Bd. of Cnty. Supervisors of Prince William Cnty. v. Oak Valley Homeowners Association, Inc.*

CAV Record Nos. 1584-25-4, 1590-25-4, and 1592-25-4; SCV Record No. _____
(filed in SCV Apr. 30, 2026). If this Court reverses that ruling, then it follows that
the mootness finding in *Burke*—which rested entirely on the Court of Appeals’ *Oak
Valley II* ruling—must also be reversed.

CONCLUSION

The Court should grant the Petitions for Appeal in both *Burke* and *Oak Valley
II* and either (1) decide the cases together, or (2) hold *Burke* pending resolution of
Oak Valley II. In granting the Petitions for Appeal in both *Burke* and *Oak Valley II*,
this Court should ultimately reverse the Court of Appeals.

Dated: April 30, 2026

Respectfully submitted,

/s/ Robert W. Loftin

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CERTIFICATE OF SERVICE

I certify that the foregoing complies with the requirements of the Rules, and

I further certify as follows:

1. This Petition for Appeal complies with the requirements of Rule 5:17.
2. The Parties to this action are as follows:
 - a. Petitioners/Defendants GW Acquisition Co. and GW Acquisition Co. I, LLC;
 - b. Defendant H&H Capital Acquisitions, LLC;
 - c. Defendant Prince William County Board of County Supervisors;
and
 - d. The remaining Respondents/Plaintiffs are: (i) Katy Burke, (ii) Liam Burke, (iii) Carol Czarkowski, (iv) Wanda Sabin, and (v) the American Battlefield Trust
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7. I certify that on April 30, 2026, I caused the foregoing brief to be sent via email to the above counsel of record.

8. I also certify that on April 30, 2026, I caused the foregoing brief to be sent via email to:

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(Record Nos. 1590-25-4, 1584-25-4, 1592-25-4)

9. On April 30, 2026, I caused the foregoing brief to be filed and served electronically in the Clerk's Office of the Court of Appeals of Virginia pursuant to the Rules of the Supreme Court of Virginia and the VACES Guidelines.

10. Pursuant to Rule 5:17(j), counsel for the Petitioners desires to state to a panel of Justices of this Court the reasons why this Petition for Appeal should be granted.

/s/ Robert W. Loftin

Robert W. Loftin