

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

GAINESVILLE CITIZENS )  
FOR SMART GROWTH )  
c/o Edward L. Donohue )  
117 Oronoco Street )  
Alexandria, VA 22314; and )

ROGER MILLER )  
6905 Broadleaf Terrace )  
Gainesville, VA 20155; )

ROGER YACKEL )  
13348 Fieldstone Way )  
Gainesville, VA 20155 )

Plaintiffs, )

v. )

CASE NO. *CL 22-9905*

PRINCE WILLIAM COUNTY )  
BOARD OF COUNTY SUPERVISORS; )  
Serve: Michelle R. Robl, )  
Prince William County Attorney )  
1 County Complex Court, Suite 240 )  
Prince William, Virginia 22192 )

CHAIR ANN WHEELER; )  
Serve: Michelle R. Robl, )  
Prince William County Attorney )  
1 County Complex Court, Suite 240 )  
Prince William, Virginia 22192 )

SUPERVISOR PETE CANDLAND; )  
Serve: Michelle R. Robl, )  
Prince William County Attorney )  
1 County Complex Court, Suite 240 )  
Prince William, Virginia 22192 )

Defendants. )

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE**

**RELIEF**

COME NOW the Plaintiffs Gainesville Citizens for Smart Growth and Roger Miller, and move this Honorable Court for the declaratory and injunctive relief requested below and such other relief as the Court may deem appropriate against Defendants, Prince William Board of County Supervisors (the “Board”), Chair Ann Wheeler (“Defendant Chair”) and Supervisor Pete Candland (“Defendant Candland”). In support thereof, Plaintiffs state as follows:

**INTRODUCTION**

1. This is an action on behalf of affected homeowners in the community to set aside the approval of Comprehensive Plan Amendment No. 2021-00004 (the “CPA”) by Defendant Board for the purpose of providing land for the development of data centers.

**THE PARTIES**

2. As described in its letter to the Prince William County Planning Commission (the “Planning Commission”) dated August 30, 2022, Gainesville Citizens for Smart Growth (“GCSG”), a non-profit, tax exempt entity and is “a public interest advocacy and legal defense organization that supports sustainable growth in Prince William County. It works in partnership with such organizations as the HOA Roundtable of Prince William County, comprised of more than 50 associations representing 85,000 residences, the Coalition to Protect Prince William County, the Prince William Conservation Alliance, the National Parks Conservation Association and many others. Gainesville Citizens was formed in early 2022 in response to the threat that the proposed 27 million square foot Prince William Digital Gateway (PWDG) poses to the residents of Prince William County and adjacent portions of Fairfax and Loudoun counties. These concerns include the degradation of regional water supplies, traffic and congestion associated with

greenlighting a cross-county highway/truck route, secondary housing and commercial sprawl, industrial blight next to a national park and state forest, noise pollution and health detriments for adjacent residents, weakly analyzed cost/benefits and more.” (Exhibit 1).

3. The majority of the members of GCSG are resident owners of the Heritage Hunt community, a neighborhood of 1,863 homes, over 3,400 residents that spans over 750 acres. These members seek to preserve the rural character of the land included in the CPA. The individual resident Plaintiffs are Roger Miller who resides at 6905 Broadleaf Terrace, Gainesville, Virginia 20155, and Roger Yackel who resides at 13348 Fieldstone Way, Gainesville, Virginia 20155. The individual Plaintiffs are negatively impacted by the impending degradation of regional water supplies, traffic and congestion associated with greenlighting a cross-county highway/truck route, secondary housing and commercial sprawl, industrial blight next to a national park and state forest, noise pollution and health detriments occasioned by the data center project.

4. Defendant Board is the duly elected governing body of the County that is empowered, among other things, to make final decisions after consideration of the recommendation of the Planning Commission regarding comprehensive plan amendments.

5. Defendant Chair is the Chair of the Board.

6. Defendant Candland is the Supervisor for the Gainesville District.

#### **JURISDICTION AND VENUE**

7. This action is brought pursuant to Sections 8.01-184 et seq. and 13.1-828 of the Virginia Code. Venue is proper pursuant to Section 8.01-257 et seq. of the Virginia Code as all parties reside and/or own land in and/or conduct business in Prince William County and the property that is the subject of the CPA at issue here is located in Prince William County.

#### **FACTS**

8. On November 2, 2022, Defendant Board concluded a public hearing of approximately 15 hours and approved the CPA. Two members of Defendant Board voted to deny, and Defendant Candland had recused himself due to a conflict of interest. In taking this action, Defendant Board failed to consider (1) the consequences of its actions on the environment, on adjacent and nearby parkland and historic resources and (2) the impacts of noise, traffic and visual blight on the community. In selectively approving approximately 2,100 acres of agricultural and residential property for data centers, Defendant Board acted at the behest of a few homeowners and other vested interests, and contrary to its own adopted master plan and policies. In the months leading up to Defendant Board's decision, and at the hearing at which it approved the CPA, Defendant Board asserted that independent reports commissioned by the County to study the need for data centers support the CPA—they do not.

#### **Timeline of the CPA**

9. On May 27, 2021, Mary Ann Ghadban submitted the CPA Application to the County. The County acknowledged receipt of the CPA Application, and it was accepted by letter dated June 15, 2021 (Exhibit 2).

10. On July 20, 2021, Defendant Board passed Resolution No. 21-445 to commence the CPA to change the long-range land use of the subject area from Agricultural Estate and Environmental Resource to Technology/ Flex. Significantly, the CPA is neither an expansion of the County's existing Data Center Opportunity Zone Overlay District (DCOZOD), nor is it contiguous to the DCOZOD. In fact, pending as of the date of this filing is Pathway to 2040, a proposed update to the County's Comprehensive Plan, one of the elements of which is Land Use, and *possible* expansion of DCOZOD where appropriate. The subject CPA is not a part of the review and recommendations of either the DCOZOD or Pathway to 2040.



11. In August of 2021, Staff created the Expanded Study Area Boundary. As noted above, the CPA is not an extension of the DCOZOD. The 2,100 acres in the CPA are designated Agricultural or Estate (AE).
12. Multiple community meetings were held.
13. From March of 2022 through July of 2022, the first draft plan was created.
14. In May, 2022 the Camoin Report (defined below) was issued to the Board, and has been cited as evidence in support of the CPA.
15. On July 7, 2022, the first draft plan was made available to the public.
16. On July 20, 2022, the Planning Commission held a work session.
17. On August 15, 2022, the second draft plan was made available to the public.
18. On September 14, 2022, the Planning Commission considered the CPA and voted to recommend approval to Defendant Board. Part of the packet of information provided to the Planning Commission was a letter dated September 9, 2022 submitted by counsel for Quality Technology Services LLC (“QTS”) and Compass Data Centers (Exhibit 3). Prior to the September 14<sup>th</sup> hearing neither of these letters was provided to the public. In recommending approval of the CPA, by a vote of 4-3-1, the Planning Commission incorporated conditions of approval as submitted in the QTS and Compass Letter, verbatim.
19. On November 2, 2022, Defendant Board approved the CPA. The Board issued a final resolution of approval (No. 22-508) which was provided to counsel on November 10, 2022. As of this filing, the Resolution has not been posted.

## COUNT I

### **A. Defendant’s Approval of the CPA Was Arbitrary and Capricious, Unsupported by the Record and Violated Plaintiffs’ Substantive Due Process Rights**

#### **1. Defendant Failed to Demonstrate Need for the CPA**

Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 19 as if fully set forth herein.

20. In May 2022, the County posted a report from Camoin Associates (the “Camoin Report”) (Exhibit 4) on the CPA webpage. County Staff and others had long promised the Camoin Report, saying it would demonstrate the pressing need for land suitable for data centers in general, and support for the CPA. It is important to note that the Camoin Report is a follow-up to a prior report done by Camoin in 2018, which was broad study of the County’s needs. In 2022, Camoin was directed to consider six (6) industries and assess the County’s land use suitability for the group.

21. The Camoin Report fails to provide statistical or even anecdotal support for the CPA. The Camoin Report fails to adequately assess existing resources of property within the DCOZOP or to consider aggregation of properties in assessing adequate size of property for the siting of data centers. In short, the Camoin Report is so superficial and lacking in adequate statistical analysis to support the CPA as to render the discussion meaningless.

22. The Camoin Report admits its inherent weaknesses in its Key Findings on page 3 when it states, “Note that this assumes a near-perfect match between available sites and industry needs, which is unlikely to be the reality.” The recent COVID pandemic has proven to drastically reduce the need for office space. Similar effects impact any of the six industries included in the Report resulting in a significantly reduced demand and rendering the CPA extreme overkill.

23. In addition to Camoin Associates, the Board commissioned a report by Stantec (the “Stantec Report”)(Exhibit 5). The Stantec Report states “(Stantec) was hired by the Prince William County Planning Office to undertake a study of the Data Center Opportunity Zone Overlay District. On March 2, 2021, the Board, via Directive (DIR) 21-20, requested that staff

bring forward recommendations to expand and change the Data Center Opportunity Zone Overlay District (DCOZOD) to reflect increased infrastructure and new ways of developing data centers.

24. Not only does the Stantec Report fail to support the CPA, it recommends against expansion of the DCOZOD—“No Additional Expansion of DCOZOD at this time.” The Stantec Report recommendation was based on a detailed assessment of existing and planned data centers, on market forces and demands and the County’s land use policies. With regard to the latter point, the Stantec Report pointedly recommends against expansion of areas planned for data centers in areas sensitive to such development, with adjacent and incompatible uses:

“(p)roximity to Manassas Battlefield is not favorable and therefore this area is not deemed suitable for inclusion in the overlay, because additional site specific mitigation may be needed.”

25. The Camoin Report is purportedly a broad analysis of the demand for facilities based on market trends of six (6) types of uses (office, medical, distribution/logistics, manufacturing, data centers and labs), and makes generalized assumptions about trends (low, midrange and high). Notably, the Camoin Report fails to even consider the possibility that demand for one or more sectors (office and medical) could rise while others (data centers and manufacturing) could drop significantly, thus negating the trend.

26. By contrast, the Stantec Report is specific to the proposed use—data centers. The Stantec Report is also quite specific as to the relationship of the Comprehensive Plan as pertains to this use, and recommends against expansion of the DCOZOD generally, and in the Pageland Lane area specifically. See page 8 – Exhibit 5.

27. The Board’s Resolution 22-508 (Exhibit 6) omits any mention of the Stantec Report.

28. The Board failed to do a detailed financial analysis of implanting the CPA, failed to provide an assessment of what costs would be passed on to the taxpayers of the county and failed to give an accurate portrayal of the overall impact on revenues and costs associated with the CPA. As further detailed in a document titled “Executive Summary & Overview of the Financial Study of the Prince William Digital Gateway (PWDG) Estimated Tax Revenues and Estimated Costs of Implementation”, authored by John W. Lyver IV, PhD, attached as Exhibit 7, the acts and omissions of the Board with regard to financial impacts and costs of implementation are glaring.

**2. Defendant Board Approved the CPA Prior to Completion of Water Study and Determination of Hazards Posed by Data Center Construction**

29. By letter dated May 4, 2022 (Exhibit 8), the Fairfax County Water Authority (FCWA) urged Defendant Board to commit to a detailed study of the implications of its proposed changes under the CPA on the Occoquan Watershed, of which Prince William County occupies approximately 43% of the area. The letter states “we request that Prince William County use the Occoquan Watershed and Reservoir Model (the “Model”) to inform long range planning process and evaluate measures to mitigate water quality impacts.” The 5/4/22 letter was a follow-up to prior letters from FCWA and telephone conversations with Staff, all aimed at urging the County to consider impacts of the CPA on the Occoquan Watershed.

30. Despite the urging of Supervisor Lawson at the Defendant Board hearing on August 11, 2022, Defendant Board would not wait for the results of the water study before moving ahead on the CPA. Supervisor Lawson’s motion to defer decision pending the results of the Model failed for lack of a second. The results of the Model could not be considered by Defendant Board as evidence in the decision, nor could the impacts of the approval on stormwater runoff, increase in salinity, sodium and bromide as has been predicted by FCWA and others.

### **3. Defendant Ignored the Stated Opposition of the Prince William County Historical Commission**

31. By letter dated October 26, 2022 (Exhibit 9), the Prince William County Historical Commission (the “Commission”) notified Defendant Board that after considering the CPA since December 2021, after thorough review and consideration by Staff and the Commission, and following several public meetings, the Commission stated its opposition to “any development on the entire area south of Little Bull Run and on the area between Sudley Road and the unnamed tributary of Lick Branch.” The Commission cited numerous historical, archeological resources within the Manassas Battlefield Historic District, including marked and unmarked graves, Civil War hospitals and cemeteries. The Commission noted the visual and auditory impacts on historic resources from the data centers, the electrical transmission lines and substations, expected to be built as accessory to the data centers.

32. In response, and as a minor concessions to these concerns, Defendant Board released the following as Draft Condition:

“DGCR 1.17 - Human Remains - Reinterment. Due to this CPA area exhibiting a high potential for unmarked burials related to military activity and African American heritage, if a rezoning and/or special use permit applicant discovers human remains during cultural resource studies, or during land disturbance activities, the applicant shall comply with all federal and state law regarding the removal and reinterment of those remains to an appropriate location on the property. County staff should require rezoning and special use permit applicants to provide archaeological monitoring to identify remains during initial land disturbance activity.”

### **4. The September 14, 2022 Recommendation of Approval by the Planning Commission Was Unlawfully Based on Evidence Not Properly Entered into the Record for Public Review**

33. The consideration and inclusion of the letter from QTS and Compass created significant backlash in the community and resulted in a letter from a consortium of environmental and

conservation groups dated October 18, 2022 (Exhibit 10) chastising the Planning Commission's action. In clear recognition of the need for time to review the Planning Commission's action and its legitimacy, Defendant Board deferred the hearing before it until November 1, 2022. In the interim, Staff issued a letter dated October 11, 2022 (Exhibit 11) attempting to explain the CPA process, purpose and timeline. In that letter, Staff states that an individual property owner seeking a change to the CPA may only accomplish it by asking Defendant Board to amend the Comprehensive Plan. Staff's statement that the individual property owners seeking initiation of the CPA by the Board are not the applicants directly contradicts the acceptance letter to Mary Ann Ghadban dated June 15, 2021 that clearly distinguishes her formal application and payment of filing fees (see attached invoice) from informal requests of other property owners. This letter that draws the distinction between the Ghadban application and informal requests by other property owners, the different deadlines for each and the payment of an application fee all illustrate that Mary Ann Ghadban was the original applicant in this case.

### **Conclusion**

34. The Defendant Board approved the CPA without a sufficient demonstration of need, prior to the completion of the relevant water studies, despite the articulated and substantiated opposition of the historical commission and following a recommendation of approval by the Planning Commission based on consideration of evidence not properly entered into the record. Therefore, the approval of the CPA must be vacated and the matter remanded to the Planning Commission.

35. In addition, the desire of the County to reap funds from the data center industry does not justify the overreaching scope of the CPA in the absence of any need for additional land and the

associated impacts to Plaintiffs' property. The approval of the CPA is in violation of Plaintiffs' substantive due process rights and must be reversed.

## COUNT II

### **Defendant Acted in Violation of The Virginia Freedom of Information Act (Va. Code §§ 2.2-3700 et seq.) and The Virginia Public Procurement Act (Va. Code §§ 2.2.-4300 et seq.)**

Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 35 as if fully set forth herein.

36. County Staff declined to respond to inquiries by members of the public relying on a Nondisclosure Agreement ("NDA") dated January 12, 2022 by and between Prince William County and QTS (Exhibit 12).

37. All matters to be considered in determining whether or not to approve the CPA fall within the purview of planning and zoning and the respective County agencies tasked with investigating environmental and historic impacts, costs, infrastructure needs and transportation effects and potential financial benefits/ detriments to County revenue. While the engagement of consultants to advise County Staff on aspects of the data center industry and the expected impacts on the communities in which they locate seems reasonable, any discussions or confidential agreements with data center developers undermines the public process and access to relevant and critical information by those in the community.

38. Sections 2.2-3700 et seq. (The Virginia Freedom of Information Act) and 2.2-4300 et seq. (The Virginia Public Procurement Act) contain exceptions to the general rules of the disclosure of public documents. None govern here given that this stage of the process is focused

on the decision of whether or not the proposed corridor meets the land use standards of Prince William County as stipulated in its Comprehensive Plan and Zoning Ordinance.

39. No explanation of the need for the NDA and the context in which it was executed was provided. This indicates that there were negotiations and transactions in process before the land was even designated for the data center use. There is no competitive bidding or request for proposal that would protect these agreements. Its existence indicates that a decision on the land use portion of this project where the public can opine is a mere formality.

### COUNT III

#### **Defendant Members' Actions Violated Virginia Code § 15.2-852 and The State and Local Government Conflicts of Interest Act (Va. Code §§ 2.2-3100-3131)**

Plaintiffs incorporate by reference the allegations contained in Paragraphs 1 through 39 as if fully set forth herein.

40. Further investigation into the financial records of Defendant Chair was warranted prior to Defendant Board rendering a decision on the CPA. Defendant Chair made financial disclosures through the Virginia Conflict of Interest and Ethics Advisory Council State and Local Statement of Economic Interest (the "Statement")(Exhibit 13).

41. Federal representatives initiated their own review and Plaintiffs submitted a timeline and detailed summary of the Defendant Chair's investment activity in Blackstone Group, the parent company of the data center developer QTS and a series of other data center-related stocks (Exhibit 14). This document was also provided to the Federal Bureau of Investigation and meetings with FBI representatives occurred.

42. Virginia Code Section 15.2-852 provides the requirements for disclosure and recusal should a Member of the Defendant Board meet certain delineated criteria for threshold financial relationships. Defendant Chair disclosed two specific investments that warrant further



investigation. Defendant Chair has holdings of between \$50,001 and \$250,000 in each of Amazon and Blackstone, two companies that stand to reap significant financial gain from approval of the Digital Gateway project.

43. The Code has specific limits for corporations (10% ownership of any class of stock) that must be met to require recusal and no information has been provided to determine if the threshold has been met.

44. The State and Local Government Conflicts of Interests Act codified in Section 2.2-3100 through 3131 contains additional language that warranted further consideration into this matter. These sections reference the Statement required to be submitted by Defendant Chair; they also, however, specifically prohibit the following:

- **§ 2.2-3103. Prohibited conduct**

No officer or employee of a state or local governmental or advisory agency shall:

- 4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public

- **§ 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town councils**

A. No person elected or appointed as a member of the governing body of a county, city or town shall have a personal interest in (i) any contract with his governing body

- **§ 2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions**

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest

45. Section 2.2-3101 defines the terms ‘personal interest,’ ‘personal interest in a contract,’ and ‘personal interest in a transaction’ as follows:

- "Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by

reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv).

- "Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.
- "Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.

46. The Virginia Code sections referenced above do not have the high thresholds listed in § 15.2-852 and certainly warranted closer scrutiny.

47. Scrutiny of Defendant Chair's financial interests in an approval is bolstered by the fact that in the subject case, she is not only acting as the head of Defendant Board, but also in a representative capacity for the residents of the Gainesville District because Defendant Supervisor had recused himself.

48. The Gainesville District residents are the citizens most directly impacted by the proposed data centers. Given that their elected voice had been removed from the process, any member of

Defendant Board tasked with representing them should have been vetted to insure complete lack of bias.

49. The Defendant Supervisor's recusal was based upon the financial windfall he stood to reap should the CPA be approved. The recusal did not stop him, however, from engaging in the process through participation in community meetings and forums where his influence as a well-known and well-liked representative cannot be separated from his role as simply a community member.

50. The intent of recusal of a Board Member is to remove potential bias from any final decision in a case. Here, Defendant Supervisor's continued insertion into the process made that impossible and negating the intent of the recusal.

#### **COUNT IV - DECLARATORY JUDGMENT AND INJUNCTION**

Plaintiffs incorporate by reference the allegations of Paragraphs 1 through 50 as if fully set forth therein.

51. Defendant Board has wrongfully approved the CPA and Plaintiffs seek an injunction to prevent any further action involving the CPA including, but not limited to building permits, site plans, requests for proposals, nondisclosure agreements, bids and contract negotiations.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court (1) vacate the approval of the CPA and remand the case to the Defendant Board for reconsideration; (2) grant the requested injunction to prevent any further action on the CPA; and (3) grant any such other and further relief as this Court deems just and proper.

VERIFICATION

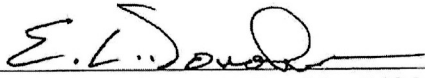
I, Roger Miller, declare under penalty of perjury that the foregoing factual allegations are true accurate.

  
\_\_\_\_\_

Roger Miller

Respectfully submitted on November 30, 2022,

DONOHUE, THEMAK & MILLER, PLC

By: 

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