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SLIP OPINION NO. 2026-OHIO-4073

**THE STATE EX REL. BRISTOLVILLE 25 DEVELOPER, L.L.C., ET AL. v. THE
VILLAGE OF LORDSTOWN ET AL.**

**[Until this opinion appears in the Ohio Official Reports advance sheets, it
may be cited as *State ex rel. Bristolville 25 Developer, L.L.C. v. Lordstown*,
Slip Opinion No. 2026-Ohio-4073.]**

Mandamus—Village lacks clear legal duty to proceed with review of data-center developer’s site plan because it is subject to ordinance placing a temporary moratorium on issuing of any new permits, as well as receipt and processing of permit applications, for proposed data centers—Relators have not shown a clear legal right to have developer’s site plan reviewed under premoratorium zoning ordinance—Gibson v. Oberlin and Fairmount Ctr. Co. v. Arnold distinguished—Writ denied.

(No. 2025-1497—Submitted August 4, 2026—Decided October 20, 2026.)

IN MANDAMUS.

The per curiam opinion below was joined by KENNEDY, C.J., and FISCHER, DEWINE, BRUNNER, DETERS, HAWKINS, and SHANAHAN, JJ.

Per Curiam.

{¶ 1} Relators, Bristolville 25 Developer, L.L.C. (“Bristolville”) and BHGH Properties, L.L.C., seek a writ of mandamus to compel respondents, the Village of Lordstown and its planning-and-zoning administrator, Kellie D. Bordner (collectively, “the village”), to perform duties under the Lordstown Codified Ordinances in effect on October 20, 2025. We previously granted an alternative writ. 2025-Ohio-5682. In addition to their evidence and merit briefing, relators have filed a motion for leave to file rebuttal evidence and a motion asking us to take judicial notice of actions taken by the Lordstown Village Council since the merit briefing concluded in this case.

{¶ 2} We deny relators’ motion for leave to file rebuttal evidence and grant their motion for judicial notice. And because relators have not shown a clear legal right to the relief they seek in this case, we deny the writ.

I. FACTUAL AND PROCEDURAL BACKGROUND

{¶ 3} Bristolville acquires and develops real property for construction of large-scale data centers throughout the United States. In February 2025, Bristolville agreed to purchase from BHGH Properties a parcel of real property located in Lordstown on which Bristolville seeks to construct a data center. The property is zoned for industrial use.

A. Site-Plan Review under the Lordstown Ordinance and Overview Process

{¶ 4} Before an applicant may request a zoning permit for new construction in Lordstown, local law requires projects to undergo a “Site Plan Review” overseen by Lordstown’s Planning and Zoning Office. Chapter 1115 of the Lordstown Codified Ordinances sets forth the site-plan-review process. Subject to exceptions

not applicable here, “[n]o permit for the construction . . . of any building shall be given . . . except in conformity with a site plan approved by the Planning Commission.” Lordstown Cod.Ord. 1115.02, available at Village of Lordstown, *Codified Ordinances of Lordstown, OH*, https://codelibrary.amlegal.com/codes/lordstown/latest/lordstown_oh/0-0-0-15997 (accessed Sept. 17, 2026) [<https://perma.cc/2SVE-YFYX>].

{¶ 5} To explain the preliminary steps to submitting a site plan for approval by the Planning Commission, the Lordstown Planning and Zoning Office provides to prospective zoning-permit applicants a two-page document titled “Overview of Lordstown Village Site Plan Review Process” (“the Overview”). The Overview details four steps in the process.

{¶ 6} Under “step one,” a zoning-permit applicant must submit to the Planning and Zoning Office drafts of a narrative outline of the project and a “site/plot plan identifying property size, setbacks from all property lines to the proposed facility . . . , and other project details.” Once the applicant submits these draft materials, “the Village of Lordstown will begin the process of engaging the Village Engineer(s) on the project.” The village engineer will then prepare and provide to the developer a “work authorization,” which the developer must sign and return to Lordstown as an acknowledgment of the developer’s responsibility to reimburse Lordstown for the village engineer’s fees related to the project. When the signed work acknowledgment is received, the village council will approve the village engineer’s engagement on the project.

{¶ 7} Once the village council approves the village engineer’s engagement on the project, the Overview process moves on to “step two,” the “pre-application meeting” required by Lordstown Cod.Ord. 1115.04(a). Under step two, before the pre-application meeting, the developer must submit detailed project information, including a preliminary-planning-evaluation form, a site-plan-review form, utility plans, a storm-water-management plan, hazard/safety plans, and approvals from

other regulatory entities. The Overview contemplates that after submission of these draft materials, a pre-application meeting will occur and should include “everyone from the Village team & everyone from the Developer’s team.”

{¶ 8} Following the pre-application meeting, “step three” of the Overview contemplates that the village engineer and planning-and-zoning administrator will each provide written comments on the proposed site plan, identifying deficiencies or additional information that is needed. Other Lordstown department heads may also provide feedback for the developer to address. The developer is required in step three to address all comments, questions, and concerns “by providing revised drafts, responses, & updates.”

{¶ 9} Once the site-plan details have been fully addressed and the draft site-plan documents updated, the Overview process proceeds to final submission of the site plan under “step four.” Final site-plan documents are submitted to Lordstown’s planning-and-zoning administrator and must “address all revisions, questions, concerns or comments from the pre-application meetings & any individual department discussions/meetings.” The applicant must file a copy of the final site plan with the planning-and-zoning administrator for approval by the Planning Commission. Lordstown Cod.Ord. 1115.04(a).

{¶ 10} Upon the developer’s filing of the final site plan, the Planning Commission “shall review the site plan pursuant to the site plan review guidelines set forth in [Lordstown Cod.Ord.] 1115.05.” Lordstown Cod.Ord. 1115.04(c). If the Planning Commission approves the final submission, the applicant may file an application for a zoning permit for the Planning and Zoning Office’s approval. *Id.* No construction may begin until the zoning permit has been issued. Lordstown Cod.Ord. 1115.02.

B. Bristolville Initiates the Site-Plan-Review Process

{¶ 11} On October 20, 2025, Bristolville initiated the site-plan-review process set forth in the Lordstown Codified Ordinances. On that date, in

accordance with step one of the Overview, Bristolville hand-delivered to the Planning and Zoning Office “the required narrative outline of the project and a site/plot plan, among other things.” Bristolville also emailed a copy of these draft materials to Bordner and Village Solicitor Matthew Ries the same day. The next day, Bordner sent an email to Bristolville, informing them that

since the Planning & Zoning Committee previously recommended a ban on data centers within the Village of Lordstown, which is now before Village Council, having just gone through second reading, the Planning & Zoning Office would not be able to proceed until Council makes a decision on the ban at the next Council meeting.

{¶ 12} Bristolville responded to Bordner a week later, asking her to proceed with the site-plan-review process in accordance with the Lordstown Codified Ordinances because data centers were still permitted under Lordstown’s zoning ordinances.

C. Lordstown Passes Ordinance Prohibiting Data Centers

{¶ 13} Six days later, on November 3, the Lordstown Village Council passed Ordinance No. 57-2025, which would prohibit any data center within the corporate boundaries of Lordstown.¹ Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/57-2025.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/NU3M-YY2U>]. The ordinance further provided that “[n]o

1. The ordinance defined “data center” as “a facility, used for the storage, management, and dissemination of digital data, which houses computer, telecommunication, and/or network equipment, systems, servers, appliances, and other associated components related to digital data operations, and/or facility designed or modified to house networked computers and data and transaction processing equipment and related infrastructure support equipment, including but not limited to server farms, cloud computing hubs, and colocation centers.” *Id.* at § 1, Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/57-2025.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/NU3M-YY2U>].

zoning permit, building permit, or certificate of occupancy shall be issued for any use that meets the [ordinance’s] definition of a data center.” *Id.* at § 2b. The ordinance was explicitly inapplicable to any data-center facility already existing or under construction as of the ordinance’s effective date. *Id.* at § 8. The village council passed the ordinance as an emergency measure, *id.* at § 9, and the ordinance was to take effect on December 3, 2025, *see* R.C. 731.29.

{¶ 14} Two days later, notwithstanding the village council’s passage of Ordinance No. 57-2025, Bordner forwarded Bristolville’s October 20 draft site-plan materials to Christopher Kogelnik, the village engineer, for his review. On November 12, Ries emailed Bristolville’s counsel a letter responding to Bristolville’s October 28 letter to Bordner. Ries denied that the village was refusing to proceed with a site-plan review and stated that Bordner had been working with Kogelnik to review Bristolville’s draft submission. Ries offered to schedule a meeting with Bristolville to discuss issues that Kogelnik had identified in his initial review, but Ries indicated that “the proposed project w[ould] likely be prohibited by Village of Lordstown’s Ordinance No. 57-2025, which prohibits the establishment and operation of data centers” in Lordstown.

D. Relators File this Action; Lordstown Repeals the Ban

{¶ 15} After receiving Ries’s letter, relators commenced this action. In their complaint, relators ask for a writ of mandamus “directing Respondents . . . to follow Lordstown Codified Ordinance 1115 by accepting, reviewing, and acting upon Bristolville’s Submission and to do so throughout the Site Plan Review Process under the Village’s applicable laws in effect as of October 20, 2025, when no data center ban was in effect in the Village.” The complaint named Ries, Bordner, and Lordstown as respondents. The village filed a motion to dismiss relators’ petition under Civ.R. 12(B)(6) for failure to state a valid claim for relief in mandamus. We granted the motion as to Ries; as to Bordner and Lordstown, we denied the motion,

ordered them to file an answer, and granted an alternative writ, setting a schedule for the parties to submit evidence and merit briefs. 2025-Ohio-5682.

{¶ 16} Before we issued our order granting an alternative writ, the village council repealed Ordinance No. 57-2025 before it was to take effect. In its place, the council unanimously passed an ordinance placing a temporary moratorium on the issuing of any new permits, as well as the receipt and processing of applications for permits, for proposed data centers in Lordstown. Lordstown Ord. No. 1-2026, § 2, available at Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/1-2026.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/48BU-9QWX>]. The moratorium was effective for up to 180 days and was to expire on July 4, 2026. *See id.* Under the terms of the moratorium, the village’s obligations to conduct site-plan reviews or to act on any application for a permit for a data center were suspended “during the time when th[e] moratorium shall be in effect.” *Id.* at § 3. As a result of the council’s enactment of the moratorium, the process for reviewing Bristolville’s site plan did not move forward.

{¶ 17} On June 15, before the expiration of the moratorium, the village council passed an ordinance extending it for an additional 180 days. *See* Lordstown Ord. No. 29-2026, available at Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/29-2026-1.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/NT5M-5JSU>].

II. EVIDENTIARY MOTIONS

A. Motion for Leave to File Rebuttal Evidence

{¶ 18} Relators filed a timely motion for leave to file rebuttal evidence under S.Ct.Prac.R. 12.06(B), asking to file proposed Exhibits JJ through OO along with the authenticating affidavit of their counsel. Relators state that the proposed exhibits consist entirely of public records and that most were obtained from Lordstown through a public-records request. The village opposes the motion.

{¶ 19} Relators’ proposed rebuttal evidence consists of documents relating to the site-plan review and zoning-permit application to construct industrial structures on property owned and developed by a nonparty to this case. According to relators, this rebuttal evidence is relevant in this case to respond to the village’s arguments that Bristolville has not yet applied for a zoning permit and that the Overview is but “an informal aid and roadmap” for the site-plan-review process. The rebuttal evidence relating to the site-plan review and zoning application of another developer for a different project, say relators, demonstrate that the village follows the Overview generally but refuses to do so with respect to Bristolville’s project.

{¶ 20} Rebuttal evidence “is that given to explain, refute, or disprove new facts introduced into evidence by the adverse party; it becomes relevant only to challenge the evidence offered by the opponent, and its scope is limited by such evidence.” *State v. McNeill*, 1998-Ohio-293, ¶ 44. We have discretion in determining whether to allow rebuttal evidence. *Id.*

{¶ 21} We deny relators’ motion. The village has argued in its merit brief that Lordstown Cod.Ord. Ch. 1115 governs the site-plan review and zoning-permit process. And while the Overview is an informal aid for the village and developers, the village noted, the Overview “does not take the place of the Village’s ordinances.” Whether the village followed the Overview with respect to the site-plan review and zoning-permit applications of a third party does not refute the village’s position that the ordinances—not the Overview—set forth the legal duty enforceable in mandamus. *See State ex rel. Shie v. Ohio Adult Parole Auth.*, 2022-Ohio-270, ¶ 11 (“An internal policy of an agency does not create a legal duty enforceable in mandamus”).

{¶ 22} Relators’ argument that the proposed rebuttal evidence responds to the village’s argument that Bristolville has not yet applied for a zoning permit also lacks merit. Under Lordstown Cod.Ord. 11154.04(c), an application for a permit

may not be submitted until the site-plan review has been completed. Relators' proposed rebuttal evidence does not refute the village's contention in this regard. If anything, the proposed evidence corroborates the village's position; that is, it demonstrates that a third party completed the site-plan process *before* submitting its application for a zoning permit.

{¶ 23} For these reasons, we deny relators' motion for leave to file rebuttal evidence.

B. Motion for Judicial Notice

{¶ 24} Relators have also filed a motion asking us to take judicial notice of (1) a notice of a public hearing and a proposed version of Lordstown Ordinance No. 29-2026, which was ultimately enacted, extending the data-center moratorium through 2026, and (2) a copy of Lordstown Ordinance No. 16-2026, by which Lordstown entered into an agreement under which consultant Brian Frantz would assist Lordstown in amending its Planning and Zoning Code to, according to relators, "creat[e a] conditional use permit process" and "specifically provide for regulations related to data centers." The village opposes the motion.

{¶ 25} Under Evid.R. 201(B), courts may take judicial notice of a fact that is "not subject to reasonable dispute" in that it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Judicial notice may be taken at any stage of the proceeding before the court. Evid.R. 201(F).

{¶ 26} We grant relators' motion for judicial notice. The existence of the notice and ordinances is not subject to reasonable dispute; indeed, they are publicly available on Lordstown's website. *See Agenda Public Hearing: June 15, 2026*, available at Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/June-15-2026-Public-Hearing.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/NMH5-APCZ>]; Lordstown Ord. No. 29-2026, available at Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/29-2026->

1.pdf (accessed Sept. 17, 2026) [<https://perma.cc/NT5M-5JSU>]; Lordstown Ord. No. 16-2026, available at Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/16-2026.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/Y67X-T26P>]. Moreover, municipal ordinances and facts that are noted in public records are the sort of facts of which we have taken judicial notice in mandamus actions. *See, e.g., State ex rel. Ohio Republican Party v. FitzGerald*, 2015-Ohio-5056, ¶ 18 (taking judicial notice of announcements posted on county government’s website); *State ex rel. Herdman v. Franklin Cty. Bd. of Elections*, 1993-Ohio-24, ¶ 9 (taking judicial notice of a village ordinance).

III. ANALYSIS

{¶ 27} To be entitled to a writ of mandamus, relators must establish by clear and convincing evidence a clear legal right to the relief they requested, a clear legal duty on the part of the village to provide that relief, and the lack of an adequate remedy in the ordinary course of the law. *State ex rel. A.N. v. Cuyahoga Cty. Prosecutor’s Office*, 2021-Ohio-2071, ¶ 9.

{¶ 28} In attempting to carry their burden to show a clear legal right and duty enforceable in mandamus, relators rely on Lordstown Cod.Ord. Ch. 1115, which sets forth the process that developers and Lordstown officials must follow for the submission, review, and—ultimately—approval of a site plan for new construction in Lordstown. In addition, relators ask that the village perform its site-plan-review duties “under [Lordstown]’s applicable laws in effect as of October 20, 2025,” the date on which relators submitted their draft site-plan-review materials. In their merit brief, relators clarify that they ask for the site-plan review to be conducted under Lordstown’s applicable laws in effect before the village council enacted the data-center moratorium.

A. The Village's Threshold Arguments

1. Declaratory Judgment and Prohibitory Injunction

{¶ 29} The village argues that relators' mandamus action is a disguised civil action for a declaratory judgment, over which this court lacks original jurisdiction. The village contends that relators' true object is not a writ of mandamus but, rather, a declaratory judgment that the village's action on Bristolville's site-plan review will be governed by local law in effect on October 20, 2025, the date on which Bristolville submitted its draft site-plan documents. To be sure, relators have done little to disguise their desire that we declare that they have a vested right to proceed with the site-plan process based on the law as it existed on October 20, 2025, before the village council passed the moratorium on data centers. Nonetheless, we reject the village's argument.

{¶ 30} The fact that a mandamus complaint contains a declaratory-judgment component is not fatal. "What distinguishes a proper mandamus complaint from an improper one is *not* whether the relator is seeking declaratory judgment as part of the complaint but whether the complaint seeks to prevent or compel official action." (Emphasis in original.) *State ex rel. Ethics First–You Decide Ohio Political Action Commt. v. DeWine*, 2016-Ohio-3144, ¶ 10. In this case, relators are asking us to compel the village to comply with its alleged duty to implement and abide by Lordstown's site-plan-review process and to move forward with Bristolville's site-plan submission. This is true even though relators are demanding that the site-plan submission be reviewed under Lordstown's applicable laws in effect as of October 20, 2025 (when Bristolville submitted its draft site-plan documents) or, at the latest, as of January 4, 2026 (before the data-center moratorium went into effect). Even though the requested relief would, in effect, prohibit the enforcement of the moratorium, such a circumstance does not change the character of the relief relators requested. "The fact that adjudicating [a] case requires [a] court also to prohibit [an] official from acting under the current version

of [a law] is ‘only ancillary’ and does not alter the fundamental nature of the relief sought.” *Id.* at ¶ 11, quoting *State ex rel. Zupancic v. Limbach*, 58 Ohio St.3d 130, 133 (1991); *see also State ex rel. Pike Cty. Convention & Visitor’s Bur. v. Pike Cty. Bd. of Commrs.*, 2021-Ohio-4031, ¶ 14 (holding that the relator stated a valid mandamus claim for performance of an official act “even though the requested relief would, in effect, prohibit the enforcement of . . . more recent county resolutions”).

{¶ 31} We therefore reject the village’s contention that we lack subject-matter jurisdiction over relators’ action.

2. *This Action Is Not Moot*

{¶ 32} The village also argues that this case is moot, emphasizing the language of relators’ prayer for relief in their complaint. In the complaint, relators request a writ of mandamus “directing Respondents . . . to follow Lordstown Codified Ordinance 1115 by accepting, reviewing, and acting upon Bristolville’s Submission and to do so throughout the Site Plan Review Process under the Village’s applicable laws in effect . . . *when no data center ban was in effect in the Village.*” (Emphasis added.) Because the data-center ban that relators’ complaint refers to was repealed, the village argues, the mandamus action is moot. And even though a moratorium on data centers is in effect, the village contends, the moratorium does not inform the issue whether the village will ultimately grant or deny a permit for Bristolville’s project.

{¶ 33} The repeal of the data-center ban is not a proper basis for dismissing this case as moot. The gravamen of relators’ action is that the village is not moving forward with the site-plan-review process as set forth in Lordstown Cod.Ord. Ch. 1115. Indeed, relators’ requested relief is no different now than before the ban was repealed: they seek a writ of mandamus compelling the village to perform the duties set forth in the Lordstown Codified Ordinances for reviewing and acting on

Bristolville’s site-plan submission. The repeal of the data-center ban does not moot relators’ pursuit of this relief.

3. The Requested Act Has Not Been Performed

{¶ 34} The village next argues that the writ should be denied because the village is already performing the act that relators are asking this court to compel through a writ of mandamus. A writ of mandamus will not issue to compel an act that a respondent has already performed. *State ex rel. Kirk v. Burcham*, 1998-Ohio-224, ¶ 7. The village argues that relators are attempting to use a mandamus action to expedite the site-plan-review process rather than to compel the performance of a duty required by law.

{¶ 35} We are unpersuaded by the village’s argument. The evidence before us shows that the village began the site-plan-review process under the Lordstown Codified Ordinances and the Overview utilized by the village in administering Lordstown Cod.Ord. 1115.04. However, that process halted on January 5, 2026, when the village council enacted the moratorium on data centers. The moratorium expressly suspended any obligation by the Planning and Zoning Office or any Lordstown official to act on an application for a zoning permit or conduct a site-plan review for data centers. Lordstown Ord. No. 1-2026, § 3, available at Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/1-2026.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/48BU-9QWX>]. And in accordance with the moratorium, the council also voted not to approve the village engineer’s proposed work authorization, which is required before the site-plan-review process can proceed. Relators are therefore seeking a writ of mandamus to compel an act that has not yet been performed—namely, reviewing Bristolville’s site plan. *See State ex rel. Martin Marietta Materials, Inc. v. Trenton*, 2024-Ohio-6054, ¶ 28-30 (12th Dist.) (granting writ of mandamus ordering a city to act on a site-plan application under the process set forth in the city’s code). Therefore, we reject the village’s argument that it is performing the act sought to be compelled.

B. Relators' Mandamus Claim

{¶ 36} Relators rely on Lordstown Cod.Ord. 1115.04 as the source of the purported clear legal right and duty they seek to enforce in mandamus. Because Lordstown Cod.Ord. 1115.04(c) states that the Planning Commission “shall review the site plan” under the site-plan-review guidelines, relators argue, the village has a duty to complete the site-plan review and act on Bristolville’s submission. For its part, the village contends that Bristolville does not have a vested legal right to have the village move forward with the site-plan review and that, in any event, Bristolville has an adequate remedy in the ordinary course of the law through an administrative appeal.

{¶ 37} Lordstown’s site-plan-review process has been placed on hold as it relates to the construction of data centers. Lordstown’s village council enacted a moratorium on “the granting/issuing of any new permits, as well as the receipt and processing of applications for permits” under the Lordstown Codified Ordinances. Lordstown Ord. No. 1-2026, available at Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/1-2026.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/48BU-9QWX>]; Lordstown Ord. No. 29-2026 (extending the moratorium), available at Village of Lordstown, <https://www.lordstown.com/wp-content/uploads/29-2026-1.pdf> (accessed Sept. 17, 2026) [<https://perma.cc/NT5M-5JSU>]. The moratorium “suspends any obligations or requirements to act . . . upon an application for a permit and/or in the site plan review approval process for Data Centers, during the time when th[e] moratorium shall be in effect.” Lordstown Ord. No. 1-2026, § 3; Lordstown Ord. No. 29-2026, § 3. As long as a duly enacted moratorium ordinance is in effect, the village does not have a clear legal duty to proceed with a review of Bristolville’s site plan, unless the moratorium is unenforceable as to Bristolville’s submission. *See State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 1997-Ohio-278, ¶ 11-15

(determining that a clear legal right enforceable in mandamus would exist if a statute blocking the requested relief were declared unconstitutional).

{¶ 38} Relators contend that the village must move forward with the site-plan-review process for Bristolville’s proposed data center because the moratorium does not apply to Bristolville’s site-plan submission. Relators argue that they have “a vested legal right” to have the project reviewed under Lordstown’s zoning ordinances “as they existed before the Village enacted the moratorium.”

{¶ 39} In invoking their “vested legal right,” relators rely first on *Gibson v. Oberlin*, 171 Ohio St. 1 (1960). In *Gibson*, a building inspector refused to issue a building permit for construction of a 12-suite apartment building. After the city’s appellate process upheld the building inspector’s decision, the owner appealed to the court of common pleas. While the appeal was pending, the city amended its zoning ordinances to make the owner’s proposed apartment building an impermissible use. *Id.* at 2. The common pleas court determined that the law in existence at the time of the permit application controlled and that the property owner therefore was entitled to the permit. On appeal, however, the court of appeals reversed, determining that the amended ordinances applied to the owner’s permit application.

{¶ 40} The property owner appealed to this court, which framed the issue as “whether the issuance of a building permit is governed by the law in effect at the time of the application for such permit or is governed by an amendment to such law enacted during the pendency of litigation.” *Id.* We held that although property owners have no vested right in the continuance of any particular regulation, “once regulations have been established, and so long as such regulations are in force, the state and its subdivisions are as much bound as the people to abide by such regulations.” *Id.* at 5. Accordingly, we reversed the court of appeals’ judgment, *id.* at 6, holding that “[w]here a property owner complies with all the legislative requirements for the procurement of a building permit and his proposed structure falls within the use classification of the area in which he proposes to build it, he has a right

to such permit, and there is a duty on the part of the officer charged therewith to issue it,” *id.* at paragraph one of the syllabus. Such an owner’s right to the permit becomes “vested . . . upon the filing of the application for the permit.” *Id.* at 6. Based on this principle, relators argue that Bristolville is entitled to have the village move forward with the site-plan review for Bristolville’s proposed data center without regard to the moratorium.

{¶ 41} Relators misapply *Gibson*. That case stands for the proposition that the property owner must have complied with all the legislative requirements for procuring a permit as of the date the owner applied for *the permit*. *Id.* at paragraph two of the syllabus. Bristolville cannot avoid Lordstown’s data-center moratorium under this rule, however, because it has not yet applied for a permit to begin construction, much less met all legislative requirements for obtaining such a permit. Under the Lordstown Codified Ordinances, the Planning Commission’s approval of a site plan is a necessary, preliminary step to obtaining a zoning permit. Lordstown Cod.Ord. 1115.02 and 1115.04(c). Bristolville is essentially asking to apply a vested-rights rule to the site-plan review process. But under *Gibson*, Bristolville does not have a vested right to the application of any particular zoning ordinance until it has met the legislative requirements to obtain a permit.

{¶ 42} Relators also contend that this court’s holding in *State ex rel. Fairmount Ctr. Co. v. Arnold*, 138 Ohio St. 259 (1941), cuts in their favor. In *Fairmount Ctr.*, a property owner obtained a permit to construct a commercial building, but the permit expired before construction began. After the permit’s expiration, the city council introduced an ordinance to rezone the owner’s property to residential use. *Id.* at 260. The council simultaneously passed an emergency ordinance that prohibited the issuance of a building permit during the pendency of any legislation that would, if adopted, prohibit any use covered by the desired permit. *Id.* After the passage of the emergency ordinance, the property owner applied for a second permit to construct the same building for which the first permit had expired.

The city’s building inspector refused to issue the second permit. *Id.* at 261. The owner would have been entitled to the second permit but for the emergency ordinance. *Id.*

{¶ 43} The owner then filed an action for a writ of mandamus in the court of appeals, seeking an order compelling the building inspector to issue the second permit. While that action was pending, the city passed the ordinance to rezone the owner’s property. The court of appeals denied the writ, and the owner appealed to this court, challenging both the rezoning ordinance and the “stop-gap” emergency ordinance that prohibited the issuance of the permit while the zoning-amendment ordinance was pending. *Id.* at 261. On appeal, this court framed the issue as whether the city had “the right, by stop-gap ordinance, to hold off [the owner] until it could put into effect an ordinance rezoning [the owner’s] property.” *Id.* We held that the stop-gap ordinance was invalid because it had not been adopted in accordance with Section 4366-11 of the General Code, which required, among other things, that the proposed zoning change be submitted to the planning commission for report and to hold a public hearing on whether the change should be made. *Id.* at 264-265. Accordingly, we reversed the judgment of the court of appeals and remanded the case for further proceedings. *Id.* at 266.

{¶ 44} Relators argue that *Fairmount Ctr.* supports their position that Lordstown’s data-center-moratorium ordinance may not be applied to suspend the village’s site-plan review of the Bristolville project. They argue that in *Fairmount Ctr.*, this court applied the prohibition on retroactive laws in Article II, Section 28 of the Ohio Constitution to the stop-gap ordinance. Likening the stop-gap ordinance in *Fairmount Ctr.* with Lordstown’s moratorium ordinance, relators contend that the moratorium cannot stop the village from moving forward on Bristolville’s site plan.

{¶ 45} As with *Gibson*, relators misapply *Fairmount Ctr.* In that case, the property owner would have been entitled to a construction permit but for the city’s passage of the stop-gap ordinance. *Id.* at 261. In contrast, here, as explained above,

Bristolville has not satisfied the requirements for obtaining a permit. Moreover, contrary to relators’ argument, we did not hold that the stop-gap ordinance in *Fairmount Ctr.* was invalid as a retroactive law under Article II, Section 28 of the Ohio Constitution. “Irrespective of whether this section is a limitation upon a municipal council,” we held, “the retroactive effect given to [the rezoning ordinance] by the emergency enactment of [the stop-gap ordinance] deprive[d] [the property owner] of its property rights without due process of law.” *Id.* at 266. In this case, however, the moratorium is not giving retroactive effect to any zoning change, because relators—unlike the property owner in *Fairmount Ctr.*—have no entitlement to a permit even under the premoratorium law.

{¶ 46} Under a close reading of the cases, neither *Gibson* nor *Fairmount Ctr.* supports relators’ request for a writ of mandamus ordering the village to move forward on Bristolville’s site-plan submission. In both of those cases, the relief sought by the property owner was the issuance of a building permit that had been denied notwithstanding the property owner’s having satisfied the legislative requirements for obtaining the permit under the zoning laws in effect at the time of application. In contrast, here, Bristolville has not met the legislative requirements for obtaining a permit and therefore has no vested right to enforcement of any particular zoning ordinance.

{¶ 47} Relators also contend that they should enjoy a vested right to Lordstown’s premoratorium zoning ordinance as a matter of public policy. They argue: “To hold that Bristolville’s right to proceed under then-existing law does not vest until after the Planning Commission approves the site plan . . . would eliminate all protection that a zoning applicant has against changes in law throughout the application process, as only projects that comply with any new such laws could be deemed vested.” Relators further argue that a ruling in the village’s favor may encourage localities to engage in dilatory tactics similar to what they say the village has employed here.

{¶ 48} The remedy for relators’ policy concern, however, is not a writ of mandamus. Even if we agreed with Bristolville’s policy argument, “[c]ourts cannot create the legal duty that is enforceable in mandamus; the creation of a duty enforceable in mandamus is a legislative and not a judicial function,” *State ex rel. Vermilion Campaign Commt. for Jean A. Anderson v. Lorain Cty. Bd. of Elections*, 2025-Ohio-3250, ¶ 33. And in this case, relators have not shown a legislatively created right or duty enforceable in mandamus. Under the moratorium, the village is under no legal duty to proceed with a site-plan review of Bristolville’s project under Lordstown Cod.Ord. 1115.04 and relators have not shown a clear legal right to have Bristolville’s site plan reviewed under the premoratorium zoning ordinance. Accordingly, we deny the writ without reaching the village’s argument that relators have an adequate administrative-appeal remedy in the ordinary course of the law that precludes relief in mandamus.

IV. CONCLUSION

{¶ 49} For the foregoing reasons, we deny relators’ motion for leave to file rebuttal evidence, grant relators’ motion for judicial notice, and deny the writ.

Writ denied.

Taft, Stettinius & Hollister, L.L.P., Lynn Rowe Larsen, William A. Doyle, Cary M. Snyder, and W. Stuart Dornette, for relators.

Mazanec, Raskin & Ryder Co., L.P.A., Frank H. Scialdone, and John D. Pinzone, for respondents.
