

VIRGINIA:

IN THE CIRCUIT COURT FOR FAUQUIER COUNTY
TWENTIETH JUDICIAL CIRCUIT

CHARLES AND MARYGAY CROSS,
LAUREN DONAHOO-HATCHELL TRUST,
KEVIN AND AMY HAMPTON,
CHYRSTAL MEHL,
PATRICIA TUCKER, SCOTT WEHNER,
CLAUDIA DOLORES SANDOVAL GONZÁLEZ,
CARLOS IVAN LEMUS BOJÓRQUEZ, and
CITIZENS FOR FAUQUIER COUNTY,

Plaintiffs-Petitioners,

v.

THE TOWN COUNCIL FOR THE
TOWN OF WARRENTON

Serve: Martin R. Crim, Esquire
Town Attorney
Vanderpool, Frostick and Nishanian, P.C.
920 Church St., Suite 400
Manassas, Virginia 20110

and

THE TOWN OF WARRENTON, VIRGINIA,

Serve: Martin R. Crim, Esquire
Town Attorney
Vanderpool, Frostick and Nishanian, P.C.
920 Church St., Suite 400
Manassas, Virginia 20110

Mr. Hugh Edward Carter Nevill
Mayor, Town of Warrenton
21 Main Street
Warrenton, Virginia 20186

Defendants-Respondents.

Case No. _____

PETITION FOR REVIEW AND COMPLAINT
IN RE: TOWN OF WARRENTON, SPECIAL USE PERMIT 22-03

Plaintiffs and Petitioners—Charles and Marygay Cross; the Lauren Donahoo-Hatchell Trust; Kevin and Amy Hampton; Chrystal Mehl; Patricia Tucker and Scott Wehner; Claudia Dolores Sandoval González and Carlos Ivan Lemus Bojórquez; and Citizens for Fauquier County, a Virginia nonstock corporation (collectively, the “**Citizens**”)—by counsel, pursuant to Sections 8.01-184, 15.2-2204(E), and 15.2-2285(F) of the Code of Virginia (the “**Code**”) and Section 11-3.9.11 of the Zoning Ordinance of the Town of Warrenton (the “**Zoning Ordinance**”), hereby file this Petition for Review and Complaint In Re: Town of Warrenton, Special Use Permit 22-03 (the “**Petition**”). The Petition seeks declaratory relief, recovery of all reasonable costs incurred in this cause, and such other and further appropriate relief from an unreasonable, unlawful, improper, and void action of the Town of Warrenton, made by and through the Town Council of the Town of Warrenton in issuing Special Use Permit 22-03 to Amazon Data Services, Inc. (“**Amazon**”).

In its pell-mell rush to secure the investment of Amazon, one of the world’s richest companies, the Town Council ran roughshod over numerous state and local zoning and planning requirements, which were codified to endure due process, preserve and protect Warrenton’s unique character and reflect the values and lifestyle of its citizenry. By ignoring these requirements, the Town Council has abdicated its responsibility to protect its citizens from the harmful effects associated with data center operations. Despite evidence of such harm and a dearth of required, relevant information about the proposed use and its impacts, and over the widespread opposition from thousands of citizens, the Town Council adopted an “approve first, investigate later” approach to the special use permit process. The Citizens bring this suit to prevent the Town Council’s abuse of that process and the sacrifice of the general welfare of Warrenton’s residents and their quiet use and enjoyment of their homes on the altar of increased tax revenue.

In support of the Petition, the Citizens state the following:

PARTIES, PROPERTY & DATA CENTER PROJECT

1. Amazon Data Services, Inc. is a stock corporation organized under the laws of the State of Delaware, with its principal office address in Seattle, Washington, that is authorized to transact business in the Commonwealth of Virginia.

2. Amazon is a wholly owned subsidiary of Amazon.com, Inc., which is publicly traded as “AMZ” on the New York Stock Exchange, and has a market capitalization of over one trillion dollars, one of the five largest in the world.

3. Amazon is the applicant for a special use permit or “SUP,” Special Use Permit 22-03, from the Town of Warrenton (the “**Amazon SUP**”).

4. The Amazon SUP was sought under Zoning Ordinance Sections 3-4.12.3 and 11-3.10 to permit Amazon to site and construct a 220,200 square foot data center in the Town of Warrenton (the “**Data Center**”).

5. The Amazon SUP authorizes Amazon to construct and operate the Data Center on the certain real property located generally north of Route 15, East Lee Highway, just west of Blackwell Road, and south of United States Highway 17 that is identified in the land records as tax map parcel number 6984-69-2419-000 (the “**Property**”).

6. The Property is located wholly within the Town of Warrenton (the “**Town**”), a historic Virginia market town and Fauquier County seat that has slowly grown to a population of approximately 10,000.

7. The Property, an unimproved lot commonly known as the Weissberg property, was purchased by Amazon on or about September 21, 2021 for **\$39,703,350.00**.

8. Amazon, accordingly, paid an amount more than ten (10) times the Property’s then-assessed value of \$3,336,800.00.

9. Amazon made this investment confident in its sway over the Town's governing body, despite it having not even applied for, much less secured, the required approval from the Town Council for the proposed Data Center use and despite the Town having not previously either 1) hosted a data centers or 2) even considered an application to permit one.

10. Sited on a prominent bluff at a major thoroughfare bringing visitors into historic Warrenton, the Data Center will rise as much as 55-feet in the air, dwarfing nearby structures and buzzing and whining day and night, every day of the year.

11. Like other data centers built by Amazon, the Data Center is expected to create an inescapable, high-pitched humming noise 24/7, irritating the waking hours, interrupting the sleep, and threatening the health of residents who live nearby.

12. The expected noise would result primarily from the cooling and power needs of the Data Center, which are met by air chillers, including compressors, condensers and fans, and by back-up diesel generators, perhaps as many as fifty-two (52), which will be tested several times a month and may be run at any time of the day or night to ensure the continuous supply of power to operate and cool the Data Center.

13. The specific cooling and electric supplying equipment to be used, the number thereof, the noise and emission mitigation measures to be employed, and the noise levels have still not yet been determined by Amazon, a fact which has not kept it from postulating the Data Center's compliance with the noise limits imposed by the Zoning Ordinance.

14. Kevin and Amy Hampton (the "**Hamptons**") are residents and citizens of the Town. Amy owns a townhome that is commonly known as 90 Dorset Lane, Warrenton, Virginia 20186 (the "**Hampton Home**"), where Amy, Kevin, and their young son reside and where Amy works.

15. The Hampton Home is identified by tax map parcel number 6984-68-1476-000 and is located in the Highlands of Warrenton Community Association, directly across Lee Highway from the Property, the area widely recognized as the area most directly impacted by the Data Center's expected noise.

16. The Hampton Home, and the Hamptons, are uniquely positioned to be adversely affected by the construction and operation activity on the Property authorized by the Amazon SUP.

a. The Hampton Home is located approximately 400 feet from the Property, not far off of Lee Highway.

b. Traffic on Lee Highway and adjoining roads, which are used by the Hamptons, will be substantially burdened and disrupted by the proposed construction of the Data Center authorized by the Amazon SUP.

c. Additionally, the only access to the Hampton Home is off of Walker Drive.

d. The proposed underground electrical distribution line connecting the Data Center to the electrical substation serving it (the "**Distribution Line**"), which substation is slated to be built by Dominion Energy near the intersection of the Warrenton Branch Greenway and Highway 17 (the "**Proposed Substation**"), will run along Walker Drive.

e. The Hamptons thus will be impacted by the construction noise and traffic, and will suffer from a lack of access to the Hampton Home, as a result of the Distribution Line project to serve the Data Center.

f. During the Property's preparation and the construction of the Data Center, the Hamptons will be harmed by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts generated from site preparation and Data Center construction.

g. Already, the Hamptons have changed their school travel route to avoid their son viewing the downed trees and unsightly site preparation activities on the Property.

h. The Hamptons' second story back deck, kitchen and dining room, and master bedroom face toward the Property, with an unobstructed view, adversely affecting the Hampton Home's viewshed.

i. The Hamptons will be harmed by the exterior all-night security lighting of the Property's perimeter, which will directly illuminate the rear of the Hampton Home.

j. The Hamptons will also be harmed by night sky light pollution caused by the anticipated all-night security lighting of the Property.

k. Enjoyment of the Hampton Home will be adversely affected by the constant noise generated from the Data Center's air chillers, including compressors, condensers and fans, and diesel generators.

l. Additionally, the Hamptons will be harmed by the diesel exhaust fumes from the generators and other ongoing environmental hazards and impacts caused by the Data Center's operations.

m. The Hamptons' son often plays outside on the grassy areas surrounding the Hampton Home, including those nearest Lee Highway and across the street from the Property, the enjoyment of which will be adversely affected by the constant noise, light, and odor referenced above.

n. Mrs. Hampton suffers from multiple chronic conditions.

o. The Hamptons believe that the stress of the constant noise and light disturbances and the health effects from the air pollution that are expected from the Property will exacerbate her current health issues, and adversely affect the family's quality of life.

p. Finally, the Hamptons will be harmed by a loss of value to the Hampton Home, as the home will be less desirable in the marketplace due to these direct impacts from the Data Center that uniquely affect the Hampton Home as a result of its proximity. The lost equity in the Hampton Home is expected to reduce the Hamptons' quality of life, as they will be forced to live more conservatively to accommodate for the loss of financial resources available for future medical needs and retirement.

17. Ms. Chrystal Mehl is a neighbor of the Hamptons, a resident and citizen of the Town, and the owner of a townhome located nearby the Property that is commonly known as 92 Dorset Lane, Warrenton, Virginia 20186 (the "Mehl Home").

18. The Mehl Home is identified by tax map parcel number 6984-68-2407-000 and is also located in the Highlands of Warrenton Community Association, across Lee Highway from the Property, the area widely recognized as the area most directly impacted by the Data Center's expected noise.

19. Ms. Mehl resides at the Mehl Home with her teenage daughter.

20. The Mehl Home, and Ms. Mehl and her daughter, are uniquely positioned to be adversely affected by the construction and operation activity on the Property authorized by the Amazon SUP.

a. The Mehl Home is located approximately 400 feet from the Property, not far off of Lee Highway.

b. Traffic on Lee Highway and adjoining roads, which are used by Ms. Mehl, will be substantially burdened and disrupted by the proposed construction of the Data Center authorized by the Amazon SUP.

c. The only access to the Mehl Home is off of Walker Drive.

d. Dominion Energy's proposed Distribution Line route connecting the Data Center to the Proposed Substation serving it is along Walker Drive.

e. Ms. Mehl and her daughter will be impacted by the construction noise and traffic, and will suffer from a lack of access to the property, resulting from installation of the Distribution Line to serve the Data Center.

f. During site preparation and construction, Ms. Mehl and her daughter will be harmed by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts generated from site preparation and Data Center construction.

g. Ms. Mehl will be harmed by the all-night security lighting of the Property's perimeter, which will directly illuminate the rear of the Mehl Home.

h. Ms. Mehl will be harmed by night sky light pollution caused by the anticipated all-night security lighting of the Property's perimeter.

i. The Mehl Home's second story back deck, dining room and kitchen, and upstairs bedroom windows face the Property with an unobstructed view of the Property, adversely affecting the Mehl Home's viewshed and exacerbating the effects of the lighting.

j. Enjoyment of the Mehl Home will be adversely affected by the constant noise generated from the Data Center's air chillers, including compressors, condensers and fans, and diesel generators.

k. Additionally, Ms. Mehl will be harmed by the diesel exhaust fumes from the generators and other ongoing environmental hazards and impacts caused by the Data Center's operations.

1. Finally, Ms. Mehl will be harmed by a loss of value to the Mehl Home, as the home will be less desirable in the marketplace due to these direct impacts from the Data Center that uniquely affect the Mehl Home as a result of its proximity.

21. The Lauren Donahoo-Hatchell Trust is an inter vivos trust that owns a single-family residence near the Property that is commonly known as 524 Colony Court, Warrenton, Virginia 20186, in which its sole trustee, Lauren Donahoo-Hatchell, resides (the “**Donahoo-Hatchell Home**”).

22. The Donahoo-Hatchell Home is identified by tax map parcel number 6984-68-8000-000 and is located in the Highlands of Warrenton Community Association, across Lee Highway from the Property.

23. The Donahoo-Hatchell Home, and Ms. Donahoo-Hatchell, are uniquely positioned to be adversely affected by the construction and operation activity on the Property authorized by the Amazon SUP.

a. Ms. Donahoo-Hatchell, now retired, moved to the Town in 2021 to be nearer family and occupies the Donahoo-Hatchell Home most of the day.

b. The Donahoo-Hatchell Home is located approximately 895 feet from the Property, not far off of Lee Highway.

c. Traffic on Lee Highway will be substantially burdened and disrupted by the proposed construction of the Data Center authorized by the Amazon SUP.

d. Additionally, the only access to the Donahoo-Hatchell Home is off of Walker Drive.

e. Dominion Energy’s Distribution Line, which will connect the Data Center to the Proposed Substation, will travel along Walker Drive.

f. Ms. Donahoo-Hatchell and her guests thus will be impacted by the construction noise and traffic, and will suffer from a lack of access to the Donahoo-Hatchell Home, resulting from installation of the Distribution Line to serve the Data Center.

g. The back of the Donahoo-Hatchell Home faces the Property, with an unobstructed view of the Property, adversely affecting the Donahoo-Hatchell Home's viewshed and the enjoyment of its back patio, where Ms. Donahoo-Hatchell often hosts family gatherings with her son, daughter-in-law and young grandson.

h. Ms. Donahoo-Hatchell watches her young grandson at the Donahoo-Hatchell Home on a regular basis, where he plays in the back yard facing the Property.

i. During site preparation and construction, Ms. Donahoo-Hatchell and her visitors will be harmed by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts generated from site preparation and building construction.

j. Ms. Donahoo-Hatchell will be harmed by the exterior lighting proposed for the Property, which will be visible from the Donahoo-Hatchell Home, likely from her master bedroom windows.

k. Ms. Donahoo-Hatchell will be harmed by night sky light pollution caused by the anticipated all-night security lighting of the Property's perimeter.

l. The quiet and peaceful enjoyment of the Donahoo-Hatchell Home will be adversely affected by the constant noise generated from the Data Center's air chillers, including compressors, condensers and fans, and diesel generators, which will be audible from the property.

m. Additionally, Ms. Donahoo-Hatchell and her visitors will be harmed by the diesel exhaust fumes from the generators and other ongoing environmental hazards and impacts caused by the Data Center's operations.

n. Ms. Donahoo-Hatchell suffers from a chronic, progressive illness that makes sound and light disturbances more troubling, exacerbating concerns about the noise, dust, odor and light that is expected from the Property.

o. Finally, Ms. Donahoo-Hatchell will be harmed by a loss of value to the Donahoo-Hatchell Home, as the home will be less desirable in the marketplace due to these direct impacts from the Data Center that uniquely affect the Donahoo-Hatchell Home as a result of its proximity.

24. Ms. Claudia Delores Sandoval González and Mr. Carlos Ivan Lemus Bojórquez own and reside at a single-family home nearby and to the northwest of the Property that is commonly known as 23 Pepper Tree Court, Warrenton, Virginia 20186 (the “**Bojórquez-Sandoval González Home**”).

25. The Bojórquez-Sandoval González Home is identified by tax map parcel number 6985-40-9574-000, and is the residence of Claudia, Carlos, and their teenage daughter.

26. The Bojórquez-Sandoval González Home is just across Blackwell Road from the Property, an area that will be directly impacted by the Data Center’s expected traffic, and will also suffer from impacts to viewshed, increased light and constant noise.

a. The Bojórquez-Sandoval González Home is located just 500 feet from the Property, in the Oak Springs Subdivision.

b. The Oak Springs Subdivision was specifically identified by Town staff as being within the zone of noise impact from the Data Center.

c. The Bojórquez-Sandoval González Home fronts Pepper Tree Court, which connects with Oak Spring Drive and hence to Blackwell Road, both roads that will be substantially

burdened and disrupted by the proposed construction of the Data Center authorized by the Amazon SUP.

d. The Bojórquez-Sandoval González Home is accessed via Blackwell Road (Route 672).

e. Accordingly, the Bojórquez-Sandoval González family are now and will be impacted by the Amazon construction traffic on Blackwell Road for a period of at least eighteen (18) months.

f. The Bojórquez-Sandoval González family and their grandson often go on walks and ride bikes on these roads near the Property, which activity will be either halted or substantially burdened by the construction on the Property and resulting traffic disruptions, noise, dust and odor.

g. The back of the Bojórquez-Sandoval González Home faces the northwestern corner of the Property, and the backyard has an unobstructed view of the Property, adversely affecting the Bojórquez-Sandoval González Home's viewshed.

h. During site preparation and construction, the Bojórquez-Sandoval González family have been and will be harmed by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts generated from site preparation and building construction.

i. They will also be harmed by the all-night security lighting of the Property's perimeter, which will directly illuminate the rear of the Bojórquez-Sandoval González Home.

j. They will be harmed by night sky light pollution caused by the anticipated all-night security lighting of the Property's perimeter.

k. Enjoyment of their home will be adversely affected by the constant noise generated from the Data Center's air chillers, including compressors, condensers and fans, and diesel generators.

l. Additionally, Ms. Sandoval González and Mr. Bojórquez will be harmed by the diesel exhaust fumes from the generators and other ongoing environmental hazards and impacts caused by the Data Center's operations.

m. Finally, Ms. Sandoval González and Mr. Bojórquez will be harmed by a loss of value to their home, which will be less desirable in the marketplace due to these direct impacts from the Data Center that uniquely affect their Home as a result of its proximity.

27. Among the Town's residents are Charles and Marygay Cross (the "Crosses"), owners of a single-family residence that is commonly known as 606 Galina Way, Warrenton, Virginia 20186 (the "Cross Home").

28. The Cross Home is part of the Monroe Estates subdivision, is identified by tax map parcel number 6983-79-4517-000, and is the residence of both the Crosses and their two teenage children.

29. Mr. Cross works from the home four days a week and Mrs. Cross is a stay-at-home mother.

30. The Cross Home, and the Crosses, are uniquely situated to be adversely affected by the construction and operation of the Proposed Substation required to serve the Data Center, which is slated to be built by Dominion Energy not far from the site of the Old Wire Factory, just off of Old Meetze Road.

a. The Cross Home is located approximately 261 feet from the Old Meetze Road right-of-way, and the Crosses must use Old Meetze Road, which is in the path of the

Distribution Line connecting the Proposed Substation to the Data Center, to travel outside their subdivision.

b. The Cross Home is located less than a half mile from the Proposed Substation site.

c. The Crosses can view the site of the Proposed Substation from their backyard, and other points within their home.

d. Because of their proximity, the Crosses anticipate seeing the Proposed Substation and its lighting from their home, especially the second floor of their residence, and to hear the substation at night, as it is nearer than Highway 17, which they can hear.

e. The Crosses drive, bike and walk, including their dog, along Old Meetze Road, which abuts the site of the Proposed Substation and is slated to be torn up to install the Distribution Line down its centerline.

f. Parts of the Proposed Substation drain toward the property of the Crosses, who anticipate that additional impervious surfaces will increase run off onto their property.

g. Given this proximity, the Crosses will be harmed by the traffic disruption, noise, vibration, dust, odor, light, viewshed impact, run-off and other environmental impacts generated from site preparation and construction of the Proposed Substation, as well as its operation.

h. Finally, the Crosses will be harmed by a loss of value to the Cross Home, as the home will be less desirable in the marketplace due to these direct impacts from the Proposed Substation that uniquely affect their home as a result of its proximity.

31. Ms. Patricia Tucker and Mr. Scott Wehner reside at a single-family residence constructed in the Town in the early 20th century, commonly known as 281 Falmouth Street, Warrenton, Virginia 20186, and owned by Ms. Tucker (the “**Tucker Home**”).

32. The Tucker Home is identified by tax map parcel number as 6984-51-7989-000, is located in the Warrenton Historic District, which the Town of Warrenton designated in 1982 with the intent to protect against the deterioration, destruction and/or encroachment on that historic area and its structures.

a. The Town recognizes the Historic District as a “positive economic asset” that “contributes significantly to tourism and thus the overall economy of the Town.”

b. The District includes 288 contributing structures; the Tucker Home, built circa 1900s, is a contributing structure in the Warrenton Historic District.

c. Ms. Tucker has resided in her home for the past forty-three (43) years.

d. The Tucker Home is historic, and so fragile, and is serviced by underground utilities of water, sewer and gas.

33. The Tucker Home is along the proposed three-mile route for the Distribution Line that would serve only to connect the Data Center to the Proposed Substation (and no other users).

34. The Tucker Home is approximately half a mile down Falmouth Street from the site of the Proposed Substation.

35. Ms. Tucker and Mr. Wehner expect to see the lights from the Proposed Substation from their residence on Falmouth Street.

36. This road is in the path of the Distribution Line, connecting the Proposed Substation to the Data Center, and so is slated to be torn up to lay the Distribution Line down its centerline.

37. Thus, the Tucker Home, and Ms. Tucker and Mr. Wehner, are uniquely positioned to be adversely affected by the construction of the Data Center on the Property authorized by the Amazon SUP, particularly the construction activity associated with burying the Distribution Line over the three-mile route connecting the Proposed Substation and the Data Center.

38. The Data Center authorized by the Amazon SUP is the cause of the construction of the Proposed Substation, which will result in the Distribution Line being installed in front of the Tucker Home.

a. Dominion Energy advised Ms. Tucker on November 22, 2022 that it planned to bury the Distribution Line, connecting the Proposed Substation to the Data Center, down the centerline of Falmouth Street, which the Tucker Home abuts.

b. The Falmouth Street roadbed is 30' wide.

c. Dominion Energy has proposed a 30' to 40' easement down Falmouth Street for the Distribution Line (the "**Proposed Easement**").

d. Given its breadth, the Proposed Easement may require a taking of Ms. Tucker's private property, as well as the removal of the sidewalk that fronts the Tucker Home.

39. During the laying of the Distribution Line, Ms. Tucker and Mr. Wehner will be harmed by the traffic disruption, noise, dust, odor, light, viewshed, run-off and other environmental impacts generated from that construction project, which will last for many months and will uniquely inconvenience their use and enjoyment of the Tucker Home and their ingress and egress thereto in ways not shared by the general public.

a. Thus, Ms. Tucker and Mr. Wehner may suffer a loss of access to the Tucker Home.

b. Additionally, Ms. Tucker and Mr. Wehner utilize and rely upon available street parking, and may not be able to park on the street during phases of the construction.

c. Given the size of the Proposed Easement and the age of the utilities serving the Tucker Home, Dominion Energy's will likely encounter the utility lines servicing the Tucker Home when laying the Distribution Line.

d. Were this to occur, Ms. Tucker and Mr. Wehner may lose utility services, such as water, sewer, and natural gas, and/or electricity, also depriving them of telephone and internet services during construction.

40. Finally, Ms. Tucker may suffer additional pecuniary harm from damage to the integrity of her historic home from construction, resulting in the incursion of expenses to repair the same and/or the permanent decrease in the value of the Tucker Home.

41. Citizens for Fauquier County ("CFFC") is a Virginia nonstock corporation duly organized and existing under the laws of the Commonwealth of Virginia.

42. CFFC is a non-partisan, non-profit organization founded in 1968 for the purpose of conserving the natural beauty and social, cultural and historical resources of Fauquier County, Virginia (the "County"), in which the Town is located.

43. The CFFC advocates for this mission, by and on behalf of its membership, many of whom are long-time residents of the Town, and who live, work, recreate and raise families in the community.

44. Many of CFFC's members reside nearby the Property or the site of the Proposed Substation, or in the path of the Distribution Line, including Mr. and Mrs. Hampton, Ms. Donahoo-Hatchell, Mr. and Mrs. Cross, and Patricia Tucker and Scott Wehner.

45. CFFC has actively opposed the Amazon SUP and redevelopment of the Property for the Data Center use, viewing that use in that location as inimical to the small-town character of the Town and the welfare of its citizens, as well as being a violation of the Town's Zoning Ordinance and recently adopted comprehensive plan.

46. The Citizens each oppose the grant of the Amazon SUP and the proposed development of the Data Center on the Property, and own real property near the Property, the Proposed Substation or on the route of the Distribution Line connecting the same, making their interest in that decision direct, immediate, pecuniary and substantial.

47. As alleged above in summary and detailed more fully in the Petition, the Citizens anticipate that the development put in motion by the Amazon SUP will visit specific harms upon their personal and property rights, and the imposition of burdens upon themselves, that while suffered by many in the immediate vicinity, are not shared by all citizens of the Town, the County or the public generally.

48. The Town of Warrenton is a body politic and corporate and political subdivision of the Commonwealth of Virginia within the County (the "**Town**"), that was initially incorporated and chartered in 1816. Town of Warrenton Charter § 1-1.

49. Under its current charter, Chapter 47 of the Virginia Acts of Assembly of 1964, the Town is to be "governed by a Town Council which shall be composed of seven members who shall be qualified voters of the Town" (the "**Council**"). Town of Warrenton Charter §§ 3-1, 3-6.

50. The Town has been delegated zoning power by the General Assembly of Virginia, Code § 15.2-2280, including the power to grant special exception or special use permits through its governing body, Code § 15.2-2286(A)(3).

51. The Town has exercised this delegated zoning power to impose various standards and limitations upon land use and development in the Town, both in the form of a detailed Zoning Ordinance and comprehensive plan, which was adopted pursuant to Code § 15.2-2223(A) and is incorporated as a governing standard for issuance of special use permits by the Zoning Ordinance.

52. The Zoning Ordinance includes many provisions specifically adopted to control the process and circumstances for the granting of special use permits, Zoning Ordinance § 11-3.10, including for data centers, Zoning Ordinance § 9-26.

JURISDICTION & VENUE

53. This Court has jurisdiction pursuant to Code §§ 8.01-184, 15.2-2285, and 17.1-500 because this Petition seeks a declaratory judgment based on actions that took place in the Town, contests a zoning decision of the Council, namely the granting of a special use permit, and involves land wholly within the Town.

54. Venue lies in this Court pursuant to Code §§ 8.01-185, 8.01-261, 8.01-262, and 15.2-2285.

GENERAL ALLEGATIONS

A. Property Background

55. The Property consists of approximately 41.793 acres of land, zoned I (Industrial District), at what is widely regarded as the “gateway” to Historic Warrenton and greets in-bound visitors to the Town immediately upon passing the “Welcome to the Town of Warrenton” sign posted in the richly shrubbed median.

56. Warrenton is the seat of the County, and has a rich downtown area, with a mix of commercial and retail businesses thriving among the historic streets and homes of Historic

Warrenton, while the remainder of the County is predominantly rural, renowned for its vibrant agricultural and equestrian activities.

57. Besides being visible to incoming and outgoing traffic from Lee Highway and Route 17, the Property is visible to hundreds of residences within the general vicinity as a result of its elevation.

58. The lands adjacent to the Property are mixed-use, and the Property itself is planned for mixed-use in the New Town Character District.

59. Single-family residential properties and townhomes are just south of the Property, as little as 400 feet from its boundaries.

60. The Property lies north and just across Lee Highway, which is posted at forty (40) miles per hour, from the Highlands of Warrenton residential neighborhood, which is the site of dozens of single family residential and multi-family dwellings and the the area likely to be “most impacted” by the noise of the proposed Data Center.

61. To the west of the Property, approximately 1,000 feet, are light commercial businesses such as restaurants, convenience stores, urgent care, and a car dealership.

62. Also to the west and north are high-density residential neighborhoods, including but not limited to the Poet’s Walk, a residential Alzheimer’s patient care facility, the Oak Springs Subdivision, also likely to be highly impacted, and various stand-alone residences on Blackwell Road.

63. The proposed Data Center’s construction is expected to have significant impacts on the north and northeastern gateways into the Town, specifically Route 17 (Broadview Avenue) Oak Springs Drive, Lee Highway and Blackwell Road.

B. Property Zoning & Planning History

64. On April 13, 2021, at the recommendation of the Planning Commission of the Town (the “**Commission**”) and pursuant to Virginia Code § 15.2-2223, the Council approved and adopted an updated comprehensive plan, titled “Plan Warrenton 2040 Comprehensive Plan” (the “**Comprehensive Plan**”).¹

65. The Comprehensive Plan was adopted following an extensive review process in which the addition of data centers as a future use was considered, but rejected.

66. The Comprehensive Plan encompasses seven (7) chapters.

67. In Chapter 7, the Comprehensive Plan sets forth a future land use map showing future character districts and land use (the “**Future Land Use Map**”).

68. In the Future Land Use Map, the Property—the subject of the Amazon SUP—is squarely within the New Town Character District and the New Town Mixed Use zone.

69. The Comprehensive Plan describes the New Town Character District as: “With large lots, direct access from Route 29, and high visibility, this district could be a location for a signature office/jobs center; with greater intensity of mixed use and strong live, work, and play options. A mix of uses could be organized around an internal street network and public amenities, such as civic spaces, parks, green space, and public gathering areas.”

70. The Future Land Use Map depicts the Property as being surrounded on the south by green park land and high-density residential uses and on the northwest by still more high-density residential uses.

¹Plan Warrenton 2040 Comprehensive Plan, adopted April 13, 2021, is available at <https://www.warrentonva.gov/DocumentCenter/View/200/April-13-2021-Adopted-Comprehensive-Plan-PDF?bidId=>.

71. The Council, the Commission and numerous residents of the Town, including members of CFFC, spent considerable time and resources to develop the Comprehensive Plan and determine the future direction and development of the Town, taking 3,300 hours of public comment and conducting thirteen (13) public hearings over the course of two-and-a-half years.

72. The public comments submitted regarding the New Town Character District include those from the former owner of the Property, Nina Weissberg, who was enthusiastic about the future development plans of the Property under the Comprehensive Plan, stating,

“As a developer and manager of significant retail within Warrenton, we are very focused on economic vitality. To ensure that the existing retail stays healthy, and that future retail is viable, we are working to move from a shopping center to a vibrant live/work/shop Character District, as so well described in the document. We think that we can do this while also helping to bring affordable, attainable, equitable mixed income multi-family midrise apartments.”

73. As noted in the Community Development Staff Analysis provided by the Town’s staff at the January 10, 2023 hearing (the “**Staff Report**”), “Plan Warrenton 2040 designates this proposed parcel on the Future Land Use Map in the New Town Character District.” Staff Report B-6. The Staff Report goes on to state, “[t]he intent of this district is to utilize the direct access from US 29/15 to encourage potential signature office and job centers with the characteristics of a mixed-use development.” Staff Report B-6. A copy of the Staff Report is attached as **Exhibit A**.

74. As noted above, the Comprehensive Plan made no provision for the construction of data centers, of which there are none in the Town.

75. The slogan for the Comprehensive Plan was “This Is Your Town, This Is Your Neighborhood, And This Is Your Plan.”

76. Such concerns for the wishes of the community and the Town’s “unique small-town character” quickly went by the board, however, when Amazon slipped into the Town, and surreptitiously began pushing for an amendment to the Zoning Ordinance to permit data centers.

77. Following a text amendment process that began the very day the Comprehensive Plan was adopted and that culminated on August 10, 2021, the Town, in coordination with Amazon, amended the Zoning Ordinance to list “Data Center” as a “permissible use” within the Industrial District, but only “by special use permit upon approval of the Town Council” (the “**Zoning Amendment**”). Zoning Ordinance § 3-4.12.3.

78. Thus, although the Property has long been zoned “Industrial,” the construction of a data center on the Property has never been among the by-right uses under the Zoning Ordinance in that district or any other in the Town.

79. At the time the process was commenced, the Zoning Amendment was not publicly associated with any proposed data center user or with the Property.

80. This is significant because the Property comprises a substantial portion—over 25 percent—of the entire New Town Character District.

81. As a result, development of an isolated Data Center, surrounded by security fencing and lighting and closed to the public, will prevent the Town from realizing the vision espoused in the Comprehensive Plan.

82. At the time the Zoning Amendment process commenced, Amazon’s intentions, although made known to certain employees of the Town, were governed by questionable non-disclosure agreements and were not publicly disclosed until the summer of 2021, despite the private involvement of Amazon representatives prior to April 2021 in the Zoning Amendment proposal and process.

83. Amazon closed on the purchase of the Property weeks after adoption of the Zoning Amendment, even though the Property still had to go through a legislative process and receive a special use permit for the Data Center to be built.

C. The Amazon SUP Applications

84. On April 13, 2022, a year to the day after adoption of the Comprehensive Plan and commencement of the Zoning Amendment process, Amazon filed its land development application with the Town, requesting the Amazon SUP so it could build the Data Center at the gateway to the Town, on forty (40) prime acres of the New Town Character District (the “**Initial Amazon Application**”). A copy of the Initial Amazon Application is attached as **Exhibit B**.

85. So rushed, the Initial Amazon Application lacked even a Land Use Affidavit, which was finally submitted on May 6, 2022 (without a date), allowing for acceptance of the application.

86. The Initial Amazon Application sought an Amazon SUP applicable to *only* 33.62 acres of the Property.

87. Under the Initial Amazon Application, the remaining acreage of the Property was to be set aside for an electric substation to be designed and constructed by Dominion Energy to serve the Data Center.

88. On or about October 28, 2022, a revised land development application was submitted by Amazon (the “**Revised Amazon Application**”). A copy of the cover letter and revised land development application (again undated) that was submitted as part of the Revised Amazon Application is attached as **Exhibit C**.

89. The Revised Amazon Application for the first time sought an SUP to develop all 41.793 acres of the Property for the Data Center, an addition of more than eight (8) acres from the Initial Amazon Application.

90. The Revised Amazon Application, despite expanding the acreage of the proposed use, removed the request for approval of an electric substation on the Property, proposing instead that this be built off-site.

91. Even the conditions adopted by the Council as part of the Amazon SUP noted that there will be an “off-site substation serving the data center.”

92. However, the Revised Amazon Application provided no information about the location of the substation, even though the Zoning Ordinance makes “the location of any proposed adequate on and off-site infrastructure” a “factor” that an SUP applicant must address. Zoning Ordinance § 11-3.10.3(30); *see id.* § 11-3.10.2(1).

93. Various representatives of Dominion Energy, the electric utility provider serving the Town and surrounding area, however, have identified a site in the vicinity of the Old Wire Factory, at 615 Falmouth Street, Warrenton, Virginia, as the preferred location for the Proposed Substation.

94. The Proposed Substation, slated to be a very substantial electric substation that covers 10 acres of land, is being advanced to serve the power demands of the Data Center; as one Dominion Energy representative stated in a public hearing, if this “customer’s special use permit does not move forward, then this project, this specific project does not move forward.”

95. For back-up power, the Data Center will employ dozens of diesel generators, which will be tested at least twice a month over a course of hours and may be run more often to ensure an uninterrupted power supply.

96. Under a proposed rule from the Virginia Department of Environmental Quality, designated data centers in Virginia will also be permitted to run their back-up generators whenever grid power is deemed to be reaching peak demand, increasing the noise and odor that may be expected from the Data Center.

97. Amazon estimated, in response to public comments, that enough diesel fuel will be consumed to require deliveries every two to three months.

98. This schedule is telling when one considers that the incomplete site development plan dated January 10, 2023 and offered by Amazon depicts the Property employing ten (10) above-ground, double-walled fuel storage tanks with a capacity to hold 50,000 gallons of diesel fuel (the “**Site Development Plan**”). A copy of the Site Development Plan along with its accompanying sheets are attached as **Exhibit D**.

99. Under the Revised Amazon Application, clearance and preparation of the Property and initial construction of the 220,200 square foot Data Center is expected to be an eighteen (18) month process, with full buildout ongoing for a period of seven (7) years.

100. The Property’s site preparation and construction process will involve tree removal, blasting, clearing, regrading and removal of soils, transportation of construction materials, and related activities associated with a major industrial construction project.

101. The construction itself will impose significant burdens, slow-downs, closures and delays especially on the roads bounding the Property—Highway 17, Business 29/15 (Lee Highway) and Route 672 (Blackwell Road), all of which are used by the Citizens on a regular basis.

102. Amazon itself has estimated that three hundred (300) persons will be involved in the construction of the Data Center.

103. Blackwell Road (Route 672), a two-lane road running to the north of Lee Highway, is required to be the sole access to the Property.

104. Blackwell Road serves the Oak Springs Shopping Plaza, the Oak Springs subdivision, where the Bojórquez-Sandoval González Home is located, and several interconnecting neighborhoods to the west and north of the Property, including but not limited to

the Poet's Walk, a residential Alzheimer's patient care facility, and stand-alone residences on Blackwell Road.

105. No representations relating to these construction burdens and whether they will comply with the Zoning Ordinance, or any conditions to mitigate the same, were provided by Amazon with the Revised Amazon Application.

106. In addition, the Property has several areas of poorly drained and erodible soils which must be protected against erosion and siltation, and is bounded by 100 Year Floodplains.

107. No associated erosion and sedimentation plans, permits or safeguards for protection of these soils were provided with the Revised Amazon Application.

108. Rather, the Revised Amazon Application simply denied the floodplain's existence: "[t]here is no floodplain."

109. As before, the Town again took an approve now, comply later approach with these and other significant environmental impacts associated with the Data Center use.

D. Public Hearings on the Amazon SUP

110. The Initial Amazon Application was presented on the following occasions: at a work session of the Commission on July 26, 2022, and at a second work session of the Commission on October 25, 2022.

111. The Revised Amazon Application was presented on the following occasions: at a public hearing before the Commission on November 15, 2022, at a public hearing before the Commission on November 22, 2022, at a public hearing before the Commission on December 20, 2022, at a public hearing before the Council on January 10, 2023, and finally at a public hearing before the Council on February 14, 2023.

E. Bullied into Action by the Council, and Lacking the Requisite Information, the Commission Recommends Denial of the Amazon SUP.

112. At the November 15, 2022 public hearing before the Commission on the Revised Amazon Application, fifty-eight (58) members of the public spoke to the proposed Amazon SUP.

113. Of those fifty-eight (58) speakers, fifty-seven (57) spoke against the Amazon SUP.

114. Over 400 written comments were submitted as well, overwhelmingly in opposition to the Amazon SUP.

115. To accommodate the large number of citizens who still wanted to be heard in opposition to the Amazon SUP, the hearing was continued to November 22, 2022.

116. At that hearing, and given the concerns raised and the lack of information contained in the Revised Amazon Application, the Commission voted to continue the hearing indefinitely to await further submissions from Amazon.

117. As stated by one of the Commissioners, “It would be a tragic rush to act on this matter. With so much missing information, we as a Planning Commission have a job to do, and that job is not done.”

118. The Council, having been advised of Amazon’s desire that the Amazon SUP be approved by January, sprang into action in response to the Commission’s decision.

119. Acting through its attorney and interim town manager, the Town Council issued a November 28, 2022 press release (the “**Commission Press Release**”), denouncing the Planning Commission’s unanimous decision as unlawful and contrary to the Town Attorney’s legal advice of November 4, 2022, that the Commission needed to render a recommendation under the 100-day rule in Code § 15.2-2285(B). A copy of the Commission Press Release is attached as **Exhibit E**.

120. Mayor H.E. Carter Nevill also publicly stated that the Council needed to “rein[] in the Planning Commission.”

121. Thereafter, the Town attorney and interim Town manager caused to be prepared a memorandum dated December 13, 2022 that advised the Council that the Commission was obligated to act, regardless of that body's view of the completeness of the Revised Amazon Application or other applicable law (the "**Commission Memo**"). A copy of the Commission Memo is attached as **Exhibit F**.

122. The Commission Memo took the position that the one-hundred-day limitation in Code § 15.2-2285(B), applicable to zoning ordinance amendments and reenactments, required the Commission to act on the Revised Amazon Application, which was submitted on October 28, 2022, and first considered at the November 22, 2022 public hearing, no later than the December 20, 2022 public hearing, less than a month after the Revised Amazon Application first being considered. The Commission Memo took this position despite the Amazon-caused delays and amendments and the Commission's dissatisfaction with the adequacy of the Revised Amazon Application and accompanying materials.

123. At the behest of Amazon, and intent on granting the Amazon SUP posthaste, a bare majority of four (4) members of the seven (7)-member Council passed a resolution on December 13, 2022, (the "**Commission Interference Resolution**"). A copy of the Commission Interference Resolution is attached as **Exhibit G**.

124. The Commission Interference Resolution noted that another public hearing of the Commission had been set for December 20, 2022, stated that it "anticipates the Planning Commission . . . may recommend approval or denial" of the Amazon SUP "to Town Council in a timely fashion" and, without awaiting action from the Commission, directed staff to advertise a public hearing on the Amazon SUP for January 10, 2023, "to place the matter on the agenda for possible action" whether or not any decision had been made by the Commission.

125. Between the time of the passage of the Commission Interference Resolution and the December 20, 2022 public hearing before the Commission, the Town’s Zoning Administrator issued a Zoning Determination Letter on the Noise Ordinance regulations under Zoning Ordinance § 9-14, responding to Amazon’s submittal for clarification as to application of the noise requirements of the Zoning Ordinance to the proposed Data Center (the “**Zoning Determination Letter**”). A copy of the Zoning Determination Letter, dated December 16, 2022, is attached as **Exhibit H**.

126. Sensing it was now or never, the Commission took up the Amazon SUP at the December 20, 2022 public hearing, without any additional submissions from Amazon, including any addressing the Zoning Determination Letter.

127. Thus, the Commission had before it no valid “[n]oise impact and abatement studies” that would enable it to make a “conclusive evaluation” of the “potential impact on adjoining properties and neighborhoods,” as required by Zoning Ordinance § 11-3.10.2(8), a fact that Amazon’s own public submissions admit.

128. Amazon conceded in the Revised Amazon Application that the only study it had provided to the Commission “was only a preliminary draft that did not include descriptive information or complete data.”

129. Moreover, it confessed that it “cannot at this submission confirm compliance with the ordinance, given that what compliance means in some cases is yet to be determined” by the Zoning Determination Letter.

130. At this resumed public hearing on the Amazon SUP, held December 20, 2022, the Commission heard orally from forty-four (44) members of the public.

131. Forty-three (43) spoke in opposition to the Amazon SUP; one (1) spoke in favor.

132. Before making a recommendation, the Commission elicited the opinion of the Town Attorney during that public hearing, who advised the Commission that the Council's Commission Interference Resolution stripped them of authority to hold the Amazon SUP over for further information and consideration.

133. Having received this opinion, the Commission recommended denial of the Revised Amazon Application on December 20, 2022 by a vote of 3-1 with one Commission member abstaining based on the view that the Revised Amazon Application was incomplete (the "**Commission Denial**").

134. The Commission Denial was recommended for, among other reasons, the Commission's finding of:

- a. A lack of information regarding noise;
- b. A lack of information regarding power supply;
- c. Impacts to the Town scenic gateway;
- d. A lack of compliance with the Comprehensive Plan;
- e. Impacts on viewsheds; and
- f. A lack of a plan regarding remediation when the Data Center is decommissioned.

F. Amazon SUP Approved 4-3 Despite Lack of Information, Overwhelming Opposition.

135. The Amazon SUP came before the Council on January 10, 2023 and, at Amazon's request for a deferral, for the last time on Valentine's Day, February 14, 2023.

136. The only information submitted from December 20, 2022 to February 14, 2023 to redress the deficiencies identified by the Commission was 1) a second noise study, confessedly premised upon speculation about the actual external noise emitting equipment and that failed to

model various likely operating conditions, and 2) new building elevations that were submitted February 14, 2023, which merely changed the exterior material to brick.

137. However, some material changes were offered after the Commission Denial involving the conditions proffered by Amazon as part of the Amazon SUP.

138. These proffered conditions, never considered by the Commission, revised a number of the conditions intended to mitigate the impact of the Data Center, including those involving noise.

139. Under the revised proffered conditions, Amazon would back-end a showing of zoning compliance on variance fronts, including noise, *after* issuance of the Amazon SUP.

140. Hundreds of members of the public attended both of those public hearings and registered their opposition to the Amazon SUP and proposed Data Center.

141. Given the number of citizens intent on making their voices heard, both meetings continued well into the next morning.

142. In the wee hours of February 15, 2023, by a vote of 4-3, the Council granted the Amazon SUP by resolution dated February 14, 2023 (the “**Amazon SUP Resolution**”). A copy of the Amazon SUP Resolution is attached as **Exhibit I**.

143. The Amazon SUP Resolution passed with aye votes from Ms. Heather Sutphin, Mr. Brett Hamby, Mr. James Hartman, and Mr. John B. “Jay” Heroux, III.

144. Three members of the Council voted nay and put on the record an array of legal and prudential concerns relating to the Amazon SUP and the Data Center.

145. These included Amazon’s failure to answer an array of questions and submit various data needed to make an informed decision about the Amazon SUP.

146. Oddly enough, the majority of the Council was not interested in having more information, or even access to various public records that were the subject of a FOIA dispute and that involved the Amazon SUP, voting down a motion to disclose those records to the Council.

147. Attached to and incorporated into the Amazon SUP Resolution were various “Conditions of Approval” proffered by Amazon at the February 14, 2023 hearing that were accepted by the Council (the “Amazon Conditions”). A copy of the Amazon Conditions is attached as Exhibit J.

148. This appeal of the Council’s granting of the Amazon SUP timely followed.

**COUNT I – DECLARATION THAT AMAZON SUP SUBMISSIONS
INADEQUATE UNDER ZONING ORDINANCE, INVALIDATING AMAZON SUP**

149. The Citizens reallege and incorporate the allegations of paragraphs 1–148 of this Petition as if set forth herein in their entirety.

150. Under the Town’s Zoning Ordinance, a special use permit may be granted to “establish or construct uses or structures which have the potential for a harmful impact upon the health, safety and welfare of the public” only upon a finding “that the use, with conditions, will not have a deleterious impact, and will reflect the spirit and intent of the Comprehensive Plan as well as this Ordinance.” Zoning Ordinance § 11-3.10.1.

151. Under the Zoning Ordinance, an SUP may be granted only “[u]pon review of the application and supporting data.” Zoning Ordinance § 11-3.10.10.

152. Under the Zoning Ordinance, Amazon was required to “provide all of the information, data and studies needed to allow the Planning Commission and Town Council, to reach conclusive evaluations” regarding compliance with the foregoing Section, including with the Zoning Ordinance and the Comprehensive Plan.

153. Confident that it had the votes in the Council, whose members it met with individually to avoid the requirements of the Virginia Freedom of Information Act, Amazon made no attempt to satisfy many of these requirements

154. In fact, Amazon failed to even engage with the Commission on them, sending no representatives to speak to that body, but rather viewing it as a speedbump on the way to approval.

155. Among the items expressly required to be submitted are eleven (11) separately numbered submissions identified in Zoning Ordinance Section 11-3.10.2.

156. As reviewed above, Amazon failed to submit many of these required items to either the Commission or the Council and/or failed to update those items to reflect changes made in the Revised Amazon Application.

157. The first among those eleven items required by Zoning Ordinance Section 11-3.10.2, a “Statement of Justification,” must itself address a whole range of potential impacts from and qualities of the proposed use, “as well as the matters set forth in section 11.3-10.3.” Zoning Ordinance § 11-3.10.2(1).

158. The referenced section provides thirty-two (32) “factors” that must be addressed by the applicant and considered prior to grant of an SUP.

159. Amazon also failed to submit many of these items required by Section 11.3-10.3 to the Commission or the Council and/or failed to update the submissions made to reflect changes made in the Revised Amazon Application.

160. The following deficiencies in the submissions made by Amazon are alleged by way of example, and are far from exhaustive.

Traffic

161. Neither the Initial Amazon Application nor the Revised Amazon Application addressed the traffic impacts associated with construction of the Data Center, as required by Zoning Ordinance Section 11-3.10.3(12), (13).

162. Rather, Amazon simply assured everyone that “[d]ata centers generate very little traffic after construction is completed.”

163. This failure occurred despite the receipt of comments from Town’s Police Department recognizing that the construction would have significant impacts on the north and northeastern gateways into the Town, and especially Route 17 (Broadview Avenue), Oak Springs Drive, Lee Highway, and Blackwell Road.

164. These impacts are expected to include, but not be limited to, loss of service at intersections, road closures, access management, and longer vehicle queues at peak traffic hours.

Noise

165. Neither the Initial Amazon Application nor the Revised Amazon Application even attempted to enable a “conclusive evaluation” of compliance with the noise requirements of the Zoning Ordinance found in Zoning Ordinance Section 9-14, as required by Zoning Ordinance Section 11-3.10.2(8) and Section 11-3.10.3(3), or with the Noise Ordinance in Warrenton Town Code, particularly Section 11-19.

166. The only “noise impact and abatement studies” submitted to the Commission were described by Amazon itself as “only a preliminary version of that document and not a final report, but is in any event out of date.”

167. In fact, the Amazon Conditions confirm that the “external noise emitting equipment” was unknown at the time of the Amazon SUP Resolution, and allow Amazon to delay

providing their identity to the Town until Amazon chooses to submit a more complete site development plan.

168. Additionally, the Amazon Conditions confirm that there is no existing study demonstrating that the use meets the requirements of Zoning Ordinance Section 9-14, as that question will only be answered “after completion of the construction” of each phase of the Data Center. Amazon Conditions § 17(a).

169. Lacking even a knowledge of the “external noise emitting equipment” to be installed, Amazon provided no submission enabling a “conclusive evaluation” regarding the manner and method of compliance with noise requirements of the Zoning Ordinance.

170. Additionally, at no time did Amazon submit an analysis of the noise impact expected from the blasting of subterranean rock during site preparation of the Property or other expected construction activities.

171. Instead of submitting data enabling “conclusive evaluations” of “any potential impacts . . . on the neighborhood due to the proposed use,” including the “level and impact of any noise emanating from the site . . . in relation to uses in the immediate area” or otherwise a showing of compliance with the noise requirements of the Zoning Ordinance, the Council granted the Amazon SUP with merely a promise to demonstrate compliance in the future and otherwise follow the law, which is not what the Zoning Ordinance requires. *See* Amazon Conditions § 17(a)–(c). Apparently, Amazon will have to build it so the Town can find out if it is lawful.

172. This “build first, comply later” approach to zoning approvals is contrary to the Zoning Ordinance specifically and Virginia law generally, and raises the danger that Amazon will be permitted to snub its nose at the law by relying on an unlawful Amazon SUP and then cite its investment in reliance thereon to justify not holding them to the letter of the law.

Lighting

173. Under the Amazon SUP materials, the Data Center's perimeter will be surrounded by an 8-foot high fence and security lighting.

174. The location, glare, brightness and visibility of the security and other lighting and their relation to and impact on other uses in the immediate area was not modeled or evaluated in any submission accompanying either the Initial Amazon Application or the Revised Amazon Application as required by Zoning Ordinance § 11-3.10.3(4), (5).

175. In fact, Town Staff noted that it could not "comment on lighting" because Amazon had "not provided specific lighting information."

176. Instead, the Amazon Conditions again postponed the requisite submission of a "Lighting Plan" until Amazon submits its Site Development Plan, whenever that is.

177. In short, Amazon did not provide "all of the information, data, and studies needed to allow the Planning Commission *and* Town Council, to reach conclusive evaluations" with regard to lighting of the Property.

Tree Preservation

178. At the time of the Initial Amazon Application, approximately 1,000 trees were on the Property, many lining its boundaries.

179. The Zoning Ordinance requires applicants for an SUP to provide for "the delineation of major trees on the site," and provides that "all major trees forward of the building setback line may be required for preservation if their removal would diminish the character of the neighborhood." Zoning Ordinance § 11-3.10.2(11).

180. Under Zoning Ordinance § 8-10.2, it is obligatory upon the applicant to “design and arrange lots in such a fashion as to preserve existing woodlands and trees of six (6) inch caliper or greater and to place such existing trees within required setbacks, buffer yards, and open space.”

181. These requirements must be shown to be met by the Site Development Plan, Zoning Ordinance § 8-2.1, which must be submitted “[f]or all special use permits,” Zoning Ordinance § 11-3.7.1, and must be part of the application therefor, *see* Zoning Ordinance § 11-3.10.2.

182. Despite repeatedly revising the development plan from its initial submission, the Revised Amazon Application did not update the Tree Survey, which Amazon and Town Staff recognized were “out of date,” having been superseded by changes in the Revised Amazon Application.

183. Neither the Amazon SUP Resolution nor the Amazon Conditions make any existing provision for preservation of trees on the Property.

184. In fact, under the Amazon Conditions, Amazon is not required to submit “a tree preservation plan” until the time it chooses to submit a “Site Plan.” Amazon Conditions § 19.

185. In short, Amazon did not provide “all of the information, data, and studies needed to allow the Planning Commission *and* Town Council, to reach conclusive evaluations” with regard to tree preservation on the Property.

186. Since adoption of the Amazon SUP Resolution, Amazon has begun clearing trees.

187. On information and belief, some of the trees cleared were among those identified for preservation at the time of the Initial Amazon Application and include trees of six (6) inch caliper or greater.

188. Removal of the trees has already diminished the character of the Property and the surrounding neighborhood.

189. Under the Amazon SUP Resolution and Amazon Conditions, Amazon is being permitted to ignore the tree preservation requirements until such time as it has removed all of the trees it wants to remove and gets around to submitting a “Site Plan.”

190. The Amazon SUP and Amazon Conditions thus serve to defeat the purpose of the tree preservation requirements in the Zoning Ordinance, and are unlawful.

Proposed Substation

191. Under the Zoning Ordinance, Amazon, as the applicant for the Amazon SUP, was obliged to provide information showing “whether the [Data Center] will be served adequately by essential public facilities, services and utilities.” Zoning Ordinance § 11-3.10.3(15).

192. Additionally, Amazon was obliged to show the “location of any . . . proposed adequate . . . off-site infrastructure.” Zoning Ordinance § 11-3.10.3(30).

193. However, neither the Revised Amazon Application, superseding in relevant part the Initial Amazon Application, the Amazon SUP Resolution, nor the Amazon Conditions specify any details of the Proposed Substation, including the location thereof.

194. In short, Amazon did not provide “all of the information, data, and studies needed to allow the Planning Commission *and* Town Council, to reach conclusive evaluations” with regard to the source of essential public utilities or off-site infrastructure.

Odors

195. Neither the Initial Amazon Application nor the Revised Amazon Application included any materials meaningfully addressing “[a]ny anticipated odors which may be generated by the uses on site,” as required by Zoning Ordinance Section 11.3-10.3(31).

196. Rather, Amazon took the position in the Revised Amazon Application that “[n]o odors are associated with this use.”

197. This statement was made despite Amazon recognizing that it will be burning tens of thousands of gallons of diesel fuel every month operating dozens of diesel generators.

198. Thus, Amazon did not provide “all of the information, data, and studies needed to allow the Planning Commission *and* Town Council, to reach conclusive evaluations” with regard to odor that will certainly be generated by the Data Center.

* * *

199. In short, and as found by the Commission in the Commission Denial, Amazon failed to provide the information required to be submitted under the Town’s Zoning Ordinance, as not “all of the information, data, and studies needed . . . to reach conclusive evaluations” was provided to both the Commission and the Council (or either of them).

200. By approving the Amazon SUP despite the lack of an adequate submission under the Town’s Zoning Ordinance, the Council’s action was unlawful, which by definition is “arbitrary and capricious, and not fairly debatable,” and renders the Amazon SUP “void and of no effect.” *Renkey v. Cnty. Bd. of Arlington Cnty.*, 272 Va. 369, 376 (2006).

201. The Citizens, whose homes lie in close proximity to the Data Center, Proposed Substation, and/or Distribution Line, are uniquely aggrieved by this proposed development approved by the Amazon SUP Resolution and Amazon Conditions, as the Property may be seen from their lands, the enjoyment of which will be burdened by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts of the construction and operation of the Data Center, Proposed Substation and/or Distribution Line.

202. The Citizens are within the zone of interests that the referenced zoning provisions, requiring a demonstration of compliance, were designed to protect.

203. Because of these particularized interests, the Citizens were among the many who wrote or voiced objections to the Commission and the Council while the Amazon SUP was under consideration, but to no avail.

204. An actual controversy exists between the Citizens, the Town and the Council with respect to whether the information submitted in support of the Amazon SUP comply with the Zoning Ordinance or is otherwise lawful and permit the Data Center to be constructed on the Property in accordance therewith.

205. This Court should adjudicate such antagonistic assertion and denial of right, review the Amazon SUP and Amazon Conditions, and declare the same to have been adopted in contravention of the Zoning Ordinance and thus arbitrary, capricious, unreasonable, rendering the same void *ab initio*.

206. That being the case, this Court should enter a judgment declaring the Amazon SUP Resolution and Amazon Conditions, and the Amazon SUP issued pursuant thereto, to be void and of no effect.

**COUNT II – DECLARATION THAT AMAZON SUP RESOLUTION LACKED
REQUISITE FINDINGS UNDER ZONING ORDINANCE**

207. The Citizens reallege and incorporate the allegations of paragraphs 1–206 of this Petition as if set forth herein in their entirety.

208. Under the Town’s Zoning Ordinance, a special use permit may be granted for a use that has “the potential for a harmful impact upon the health, safety and welfare of the public” only upon a finding “that the use, with conditions, will not have a deleterious impact, and will reflect the spirit and intent of the Comprehensive Plan as well as this Ordinance.” Zoning Ordinance § 11-3.10.1.

209. Additionally, in “rendering a decision on a particular special use permit,” the Council “shall determine whether the application complies with the special use provisions in the particular district,” here those contained in Zoning Ordinance § 3-4.12.3 and Zoning Ordinance § 9-26, and also “complies with” “the Comprehensive Plan.” Zoning Ordinance § 11-3.10.7.

210. The Data Center proposed by the Amazon SUP has “the potential for a harmful impact upon the health, safety and welfare of the public,” including by way of noise, traffic, emissions, and run-off from the Property, including but not limited to during the construction phase, which is expected to last for years.

211. The Council failed to find that the Data Center “will not have a deleterious impact.”

212. The Council failed to find that the Data Center “will reflect the spirit and intent of the Comprehensive Plan as well as this Ordinance.”

213. The Council made neither finding because the facts show that the proposed Data Center, Proposed Substation, and connecting Distribution Line will have a deleterious impact on those in close proximity to them, including the Citizens, and do not reflect the spirit or intent of the Comprehensive Plan or of the Zoning Ordinance, as detailed more in the preceding allegations and in the following counts, both of which are incorporated herein.

214. The Citizens, whose homes lie in close proximity to the Data Center, Proposed Substation, and/or Distribution Line are uniquely aggrieved by this proposed development approved by the Amazon SUP Resolution, as the Property may be seen from their lands, the enjoyment of which will be burdened by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts of the construction and operation of the Data Center, Proposed Substation and/or Distribution Line.

215. The Citizens are within the zone of interests that the required findings were designed to protect.

216. Because of these particularized interests, the Citizens were among the many who wrote or voiced objections to the Commission and the Council while the Amazon SUP was under consideration, but to no avail.

217. An actual controversy exists between the Citizens, the Town and the Council with respect to whether the requisite findings needed to comply with the Zoning Ordinance were made by the Amazon SUP Resolution and whether the same lawfully permits the Data Center to be constructed on the Property in accordance with the Amazon SUP.

218. This Court should adjudicate such antagonistic assertion and denial of right, review the Amazon SUP Resolution, and declare the same to have been adopted in contravention of the Zoning Ordinance and thus arbitrary, capricious, unreasonable, rendering the same void *ab initio*.

219. That being the case, this Court should enter a judgment declaring the Amazon SUP Resolution, and the Amazon SUP issued pursuant thereto, to be void and of no effect.

**COUNT III – DECLARATION THAT AMAZON CONDITIONS VIOLATE ZONING
ORDINANCE AND COMPREHENSIVE PLAN**

220. The Citizens reallege and incorporate the allegations of paragraphs 1–219 of this Petition as if set forth herein in their entirety.

221. Under the Zoning Ordinance, the Council “may impose” various “conditions, safeguards and restrictions” that are designed, not to accommodate the convenience and benefit the operations of the applicant, but solely “to avoid, minimize or mitigate any potentially adverse or injurious effect of such special uses upon other properties in the neighborhood, and to carry out the general purpose and intent of this Ordinance.” Zoning Ordinance § 11-3.10.4.

222. The protective nature of these conditions is made clear by the examples given, which are summed up as “reasonable requirements deemed necessary to mitigate the impacts of the use and safeguard the interests of the public.” Zoning Ordinance § 11-3.10.4.

223. The Amazon Conditions are not of this character, but instead permit Amazon to increase the impacts of the use without regard to the interests of the public.

224. The Zoning Ordinance provision making data centers “permissible” conditions that permissibility on their meeting “the following requirements,” which address, among other things, the use of “potable water” for cooling the data center and the use of “mufflers” on generators.

225. Specifically, under Zoning Ordinance § 9-26.1(B), it is plainly provided that “[p]otable water shall not be used for cooling” of the Data Center.

226. While Zoning Ordinance § 9-26.1 provides that the Council may grant relief from certain data center requirements “as part of the special use permit application,” *see, e.g.*, Zoning Ordinance § 9-26.1(A), (D)(1), this restriction on the use of potable water for cooling or the use of “mufflers” on generators contains no such provision.

227. Under the Warrenton Town Code, as well as the Zoning Ordinance, “[t]he word ‘shall’ is mandatory.” Warrenton Town Code § 1-2.

228. Accordingly, the words “shall not” are prohibitory.

229. Thus, the Council may not waive this zoning requirement in the Amazon Conditions.

230. Section 14 of the Amazon Conditions provide that Amazon “shall not use public water for the general purposes of cooling the data center but may use it for initial charging of the cooling system.”

231. The initial charging of the cooling system is expected to involve the use of 19,000 gallons of “public water,” which is “potable water”; however, the maximum system volume is ten (10) times as much, or 190,000 gallons.

232. Such water will be used primarily “for cooling” of the Data Center, in violation of the non-waivable terms of the Zoning Ordinance.

233. Additionally, the Town’s Noise Ordinance prohibits “[t]he discharge into the open air of the exhaust from any steam engine, stationary internal combustion engine or motorboat engine except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.” Warrenton Town Ordinance § 11-19(a)(5).

234. “An exhaust system is a violation of this section if it permits the escape of noise in excess of that permitted by the standard factory equipment exhaust system of private passenger motor vehicles or trucks of standard make.” Warrenton Town Ordinance § 11-19(a)(5).

235. Neither the Amazon SUP Resolution nor the Amazon Conditions address compliance with this Warrenton Town Ordinance on noise, but purport to authorize the Amazon SUP if merely the requirements of Zoning Ordinance § 9-14.2 are met. Amazon Conditions §§ 6(d), 17(a), (c).

236. Additionally, the Zoning Ordinance provision making data centers “permissible” conditions that permissibility on, among things, the condition that “[a]ll generators shall be equipped with mufflers to reduce emissions and noise.” Zoning Ordinance § 9-26.1(G)(2).

237. Under the Warrenton Town Code, as well as the Zoning Ordinance, “[t]he word ‘shall’ is mandatory.” Warrenton Town Code § 1-2.

238. As with the “potable water” restriction mentioned above, this requirement that “all generators . . . be equipped with mufflers to reduce emissions and noise” contains no provision authorizing waiver or modification of any sort.

239. Yet, the Amazon Conditions provide for “noise mitigation measures” solely “to meet § 9-14.2” of the Zoning Ordinance and do not mention, much less require, “mufflers to reduce emissions and noise.”

240. Moreover, the Amazon Conditions conflict with the Comprehensive Plan, as detailed in Count V, below, the paragraphs of which the Citizens reallege and incorporate as if set forth herein in their entirety.

241. By approving the Amazon SUP with provisions that conflict with the Town’s Zoning Ordinance and Comprehensive Plan, the Council’s action was unlawful, which by definition is “arbitrary and capricious, and not fairly debatable,” and renders Amazon SUP “void and of no effect.” *Renkey v. Cnty. Bd. of Arlington Cnty.*, 272 Va. 369, 376 (2006).

242. The Citizens, whose homes lie in close proximity to the Data Center, Proposed Substation, and/or Distribution Line, are uniquely aggrieved by this proposed development approved by the Amazon SUP and Amazon Conditions, as the Property may be seen from their lands, the enjoyment of which will be burdened by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts of the construction and operation of the Data Center, Proposed Substation and/or Distribution Line.

243. The Citizens are within the zone of interests that the referenced zoning provisions regarding use of potable water, noise and pollution were designed to protect.

244. Because of these particularized interests, the Citizens were among the many who wrote or voiced objections to the Commission and the Council while the Amazon SUP was under consideration, but to no avail.

245. An actual controversy exists between the Citizens, the Town and the Council with respect to whether the Amazon Conditions comply with the Zoning Ordinance or are otherwise lawful and permit the Data Center to be constructed on the Property in accordance therewith.

246. The Amazon Conditions are an integral part of the Amazon SUP Resolution and Amazon SUP issued pursuant thereto, and cannot be severed therefrom.

247. This Court should adjudicate such antagonistic assertion and denial of right, review the Amazon Conditions, and declare the same to have been adopted in contravention of the Zoning Ordinance and thus arbitrary, capricious, unreasonable, rendering the same void *ab initio*.

248. That being the case, this Court should enter a judgment declaring the Amazon SUP Resolution and Amazon Conditions, and the Amazon SUP issued pursuant thereto, to be void and of no effect.

COUNT IV – DECLARATION THAT AMAZON SUP VOID BECAUSE APPROVED WITHOUT REQUIRED PUBLIC NOTICE OR SECOND COMMISSION HEARING

249. The Citizens reallege and incorporate the allegations of paragraphs 1–248 of this Petition as if set forth herein in their entirety.

250. Under Virginia law, an amendment to a zoning ordinance cannot be adopted without submission to the planning commission. Va. Code § 15.2-2285(B).

251. Also under Virginia law, an amendment to a zoning ordinance, or any other for that matter, cannot be approved without appropriate public notice. *See* Va. Code § 15.2-2204.

252. The same is true for special use permits, both as a matter of Virginia law and the Zoning Ordinance, which specifically provides that the Commission and the Council’s decisions

must be made at a public hearing “after notice as required by § 15.2-2204 of the Code of Virginia, as amended.” Zoning Ordinance §§ 11-3.10.7, 11-3.10.8.

253. The Amazon SUP Resolution purported to approve, among the Amazon Conditions, a waiver/modification of the parking load space requirement, reducing the requirement from twenty-two (22) spaces to one (1).

254. This waiver/modification of the parking load requirement was not duly and properly noticed as required by law, having not been mentioned in any of the public notices.

255. Additionally, the Amazon SUP Resolution purported to approve, among the Amazon Conditions, a waiver/modification of the requirement to show that “the [Data Center] will be served adequately by essential public facilities, services and utilities,” Zoning Ordinance § 11-3.10.3(15), or to show the “location of any . . . proposed adequate . . . off-site infrastructure.” Zoning Ordinance § 11-3.10.3(30).

256. As a result, although necessitated by the Data Center, the Proposed Substation and its location is not the subject of any public notice.

257. The public notices thus fail to inform citizens of the potential impact of the decision contemplated by the Council.

258. That failure of notice renders the Amazon Conditions, the Amazon SUP Resolution, and the Amazon SUP issued pursuant thereto null and void. *See Glazebrook v. Bd. of Supvrs. of Spotsylvania Cnty.*, 266 Va. 550, 556–57 (2003).

259. Under Zoning Ordinance § 11-3.10.9, when “additional conditions be agreed to or offered by the applicant that . . . alters conditions that were intended to mitigate the impact of the development as determined by the Zoning Administrator,” and when this occurs “after the Planning Commission has made its recommendation to the Town Council,” “then a second public

hearing shall be held by the Planning Commission before the modified application can be heard by the Town Council.”

260. This Zoning Ordinance adds specific requirements to those provided by Code § 15.2-2285(B), which the Supreme Court of Virginia has treated as a precondition for valid action by a local governing body. *See Cnty. of Prince William v. Rau*, 239 Va. 616, 619 (1990).

261. Accordingly, only “[b]y complying with these procedures [does] the governing body acquire[] the same authority to act upon a zoning proposal as it has to act upon other legislative matters.” *Town of Vinton v. Falcun Corp.*, 226 Va. 62, 66 (1983).

262. The Commission made its recommendation to the Council on December 20, 2022.

263. The Amazon Conditions were not submitted to the Commission in their present form on or before December 20, 2022, when it made the Commission Denial.

264. The Amazon Conditions were not discussed with the Commission in their present form at the public hearings before the Commission, including at the December 20, 2022 public hearing.

265. The conditions proffered by Amazon to or discussed with the Commission prior to the Commission Denial did not include all of those conditions contained in the Amazon Conditions that were approved by the Council.

266. In fact, the Amazon Conditions that were submitted to the Council altered a number of conditions submitted to the Commission that were intended to mitigate the impact of the Data Center’s noise, noise testing, the Data Center’s impact on the viewshed of nearby lands, and the environmental clean-up on decommissioning that were not submitted to or discussed with the Commission.

267. These alterations were made, in part, in response to the Zoning Determination Letter involving the Noise Ordinance regulations under Zoning Ordinance § 9-14 and other concerns raised during the January 10, 2023 public hearing before the Council.

268. Given these facts, the Zoning Ordinance mandated that “a second public hearing” be held before the Commission “before the modified application can be heard by the Town Council.” Zoning Ordinance § 11-3.10.9.

269. This second public hearing was never held on the Amazon Conditions.

270. Yet the Revised Amazon Application, with the new Amazon Conditions, was “heard by the Town Council” and ultimately approved via the Amazon SUP Resolution that granted the Amazon SUP without complying with the “second public hearing” requirement.

271. Accordingly, the Amazon SUP, along with the Amazon Conditions, which were approved via the Amazon SUP Resolution that was adopted without compliance with Zoning Ordinance § 11-3.10.9 are null and void.

272. The Citizens, whose homes lie in close proximity to the Data Center, Proposed Substation, and/or Distribution Line, are uniquely aggrieved by the Amazon SUP and Amazon Conditions, as the Property may be seen from their lands, the enjoyment of which will be burdened by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts of the construction and operation of the Data Center, Proposed Substation and/or Distribution Line.

273. The Citizens are within the zone of interests that the referenced zoning provisions, requiring appropriate inquiry and review by the Commission, were designed to protect.

274. Because of these particularized interests, the Citizens were among the many who wrote or voiced objections to the Commission and the Council while the Amazon SUP was under consideration, but to no avail.

275. An actual controversy exists between the Citizens, the Town and the Council with respect to whether the Amazon SUP was adopted by a process that complied with the requirements of the Zoning Ordinance or is otherwise lawful and permit the Data Center to be constructed on the Property in accordance therewith.

276. This Court should adjudicate such antagonistic assertion and denial of right, review whether the Amazon SUP was adopted by a process that complied with the requirements of the Zoning Ordinance or is otherwise lawful, and declare the same to have been adopted in contravention of the Zoning Ordinance and thus arbitrary, capricious, unreasonable, rendering the same null and void *ab initio*.

277. That being the case, this Court should enter a judgment declaring the Amazon SUP Resolution and Amazon Conditions, and the Amazon SUP issued pursuant thereto, to be void and of no effect.

**COUNT V – DECLARATION THAT AMAZON SUP, AMAZON SUP RESOLUTION
AND AMAZON CONDITIONS VOID BECAUSE
NONCOMPLIANT WITH COMPREHENSIVE PLAN**

278. The Citizens reallege and incorporate the allegations of paragraphs 1–277 of this Petition as if set forth herein in their entirety.

279. The Zoning Ordinance provides that an SUP may be granted only upon the Council’s determination that “the application” therefore “complies with . . . the Comprehensive Plan.” Zoning Ordinance § 11-3.10.10.

280. This determination is part and parcel of the Council's decision as to whether an SUP, including the Amazon SUP, "should be approved or denied."

281. The Council recognized as much in including a recital "that the Application is consistent with the Town of Warrenton's Comprehensive Plan based on the analysis in the staff report."

282. Accordingly, the Comprehensive Plan is part of the law governing the grant of SUPs in the Town, non-compliance with which will invalidate the granting of the Amazon SUP.

283. Additionally, the Amazon Conditions, which are part and parcel of the Amazon SUP, must comply with the Comprehensive Plan, as provided by the Code. Va. Code § 15.2-2297(a)(viii) (allowing for "reasonable conditions" to be proffered "provided that," inter alia, "all such conditions shall be in conformity with the comprehensive plan as defined in § 15.2-2223").

284. The Data Center, approved through the granting of the Amazon SUP, with the Amazon Conditions, by and through the Amazon SUP Resolution, and acting on the Revised Amazon Application, does not comply with the Comprehensive Plan.

285. The Comprehensive Plan provides for no data center uses.

286. The Comprehensive Plan calls for numerous elements that the Data Center either does not provide or uniquely undermines.

287. The New Town Character District is designed to revitalize the existing commercial shopping malls and residential areas, and include a mix of uses, green space and public amenities, that collectively cohere to create a sense of belonging, a sense of place.

288. In fact, the Data Center will block public access to the Property, be surrounded by an eight-foot high security fence, lit night and day by security lighting and recorded by security

cameras, patrolled by professional security personnel, and will allow entry to authorized personnel via a sole point of access off of Blackwell Road, under the superintendence of a guardhouse.

289. To the extent a sense of place or belonging will be created, it will be that of a prison.

290. What the Data Center is couldn't be more inconsistent with the Comprehensive Plan's goals.

291. And what the Data Center isn't counts too.

292. The Data Center does not include "mixed-use residential, entertainment [or] commercial uses," as called for in the Comprehensive Plan.

293. The Data Center will not "minimize the loss of existing tree cover for habitat preservation," as no updated Tree Plan was submitted with the Revised Amazon Application.

294. In fact, under the Amazon Conditions, Amazon is not required to submit "a tree preservation plan" until the time it chooses to submit a "Site Plan." Amazon Conditions § 19.

295. Since the Council's granting of the Amazon SUP, hundreds of trees have been removed by Amazon without a Tree Plan and, on information and belief, without approval from the Town.

296. The Citizens, whose homes lie in close proximity to the Data Center, Proposed Substation, and/or Distribution Line, are uniquely aggrieved by the Data Center approved by the Amazon SUP Resolution and Amazon Conditions, in violation of the Comprehensive Plan, as the Property may be seen from their lands, the enjoyment of which will be burdened by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts of the construction and operation of the Data Center, Proposed Substation and/or Distribution Line.

297. The Citizens are within the zone of interests that the Comprehensive Plan and incorporation zoning provisions were designed to protect.

298. Because of their particularized interests, the Citizens were among the many who wrote and voiced objections to the Commission and the Council while the Amazon SUP was under consideration, but to no avail.

299. An actual controversy exists between the Citizens, the Town and the Council with respect to whether the Amazon SUP Resolution and Amazon Conditions comply with the Comprehensive Plan or are otherwise lawful and permit the Data Center to be constructed on the Property in accordance therewith.

300. This Court should adjudicate such antagonistic assertion and denial of right, review the Amazon SUP Resolution and Amazon Conditions for compliance with the Comprehensive Plan, and declare the same to have been adopted in contravention of the Zoning Ordinance and thus arbitrary, capricious, unreasonable, rendering the same void *ab initio*.

301. That being the case, this Court should enter a judgment declaring the Amazon SUP Resolution and Amazon Conditions, and the Amazon SUP issued pursuant thereto, to be void and of no effect.

**COUNT VI – AMAZON SUP VOID BECAUSE IMROPER ATTEMPT
TO AMEND ZONING ORDINANCE BY RESOLUTION**

302. The Citizens reallege and incorporate the allegations of paragraphs 1–301 of this Petition as if set forth herein in their entirety.

303. Virginia Code § 15.2-1426 provides that “[a]ll ordinances which repeal or amend existing ordinances shall identify by title the section to be repealed or amended.”

304. Virginia Code § 15.2-1427(D) provides that “[a]n ordinance may be amended or repealed in the same manner, or by the same procedure, in which, or by which, ordinances are adopted.”

305. Under Virginia Code § 15.2-1427(E), “[a]n amendment or repeal of an ordinance shall be in the form of an ordinance.”

306. The Zoning Ordinance provides that applications “for a special use permit shall . . . be processed in the same manner as [are] zoning amendments” Zoning Ordinance § 11-3.10.6.

307. While purporting to relieve the Property of the requirements of the Zoning Ordinance, the Amazon SUP was adopted not by an ordinance, but by and in the form of a resolution.

308. The Amazon SUP Resolution was not adopted by the same procedure applicable to other amendments to the Zoning Ordinance, which is provided by Zoning Ordinance § 11-3.9, in the manner provided by Warrenton Town Code § 2-71, *et seq.*, or by generally applicable law for zoning ordinance amendments, Virginia Code § 15.2-2204.

309. The Amazon SUP Resolution does not “identify by title the section” of the Zoning Ordinance “to be repealed or amended.”

310. Having been adopted by the Amazon SUP Resolution, the Amazon SUP cannot amend or repeal any provision of the Zoning Ordinance.

311. However, the Amazon SUP, by its terms, conflicts with the Zoning Ordinance in, at least, the following ways:

a. Authorizes Amazon to construct the Data Center, which is not a by-right use for land zoned Industrial in the Town;

b. Authorizes Amazon to construct buildings to a greater height than is allowable to land zoned Industrial in the Town;

c. Authorizes Amazon to surround the Data Center with security fencing in excess of six (6) feet in height and up to eight (8) feet in height, contrary to Zoning Ordinance § 2-19.1;

d. Authorizes Amazon to use potable water for cooling of the Data Center by allowing its use “for initial charging of the cooling system”; and

e. Authorizes Amazon to reduce the parking loading space requirement under Zoning Ordinance § 7-18.6 from twenty-two (22) spaces to one (1) space.

312. The Amazon SUP, having been granted in violation of the Zoning Ordinance, is invalid and void, of no force and effect, and due to be so declared by this Court.

313. The Citizens, whose homes lie in close proximity to the Data Center, Proposed Substation, and/or Distribution Line, are uniquely aggrieved by this proposed development approved by the Amazon SUP and Amazon Conditions, as the Property may be seen from their lands, the enjoyment of which will be burdened by the traffic disruption, noise, dust, odor, light, viewshed impact, run-off and other environmental impacts of the construction and operation of the Data Center, Proposed Substation and/or Distribution Line.

314. The Citizens are within the zone of interests that the referenced statutory provisions, requiring proper notice, procedure and form, were designed to protect.

315. Because of these particularized burdens, and others alleged herein, the Citizens were among many who wrote or voiced objections to the Commission and the Council while the Amazon SUP was under consideration, but to no avail.

316. An actual controversy exists between the Citizens, the Town and the Council with respect to whether the Amazon SUP Resolution and accompanying Amazon Conditions validly revised the Zoning Ordinance or are otherwise lawful, including whether the revision to the

parking load space requirement was lawfully noticed for public hearing, and whether the Amazon SUP issued pursuant thereto lawfully authorized the Data Center to be constructed on the Property in accordance therewith.

317. This Court should adjudicate such antagonistic assertion and denial of right, review the Amazon SUP Resolution, and declare the same to have been adopted in contravention of Town ordinances and governing Virginia statutory law, and thus arbitrary, capricious, unreasonable, rendering the same void *ab initio*.

318. That being the case, this Court should enter a judgment declaring the Amazon SUP Resolution and Amazon Conditions, and the Amazon SUP issued pursuant thereto, to be void and of no effect.

PRAYER FOR RELIEF

WHEREFORE, the Citizens pray that the Court:

- (1) Grant the Petition in favor of the Citizens and against the Town and the Council;
- (2) Enter a declaratory judgment in their favor, declaring that the Amazon SUP Resolution, the Amazon Conditions, and so the resulting Amazon SUP violated the Virginia Code, the Warrenton Town Code, the Zoning Ordinance, and the Comprehensive Plan, and are therefore unlawful;
- (3) Enter a declaratory judgment in their favor, declaring that the Amazon SUP Resolution, the Amazon Conditions, and so the resulting Amazon SUP are unreasonable, and are therefore unlawful;
- (4) Enter a declaratory judgment in their favor, declaring that the Amazon SUP issued pursuant to the unlawful Amazon SUP Resolution and Amazon Conditions is therefore void *ab initio*;

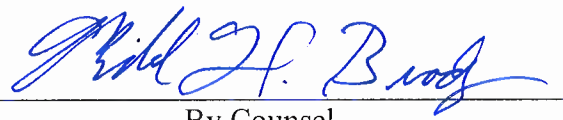
(5) Vacate the Amazon SUP and/or remand the same to the Council with a direction to deny the Amazon SUP;

(6) Award the Citizens their reasonable costs expended in this cause; and

(7) Grant to the Citizens such other and further relief as justice may require and to equity may seem meet.

Dated: March 16, 2023

Respectfully submitted,



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