VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GOOCHLAND

CYNTHIA HAAS, *et al*.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. CL25-1270
	)	
BOARD OF SUPERVISORS OF GOOCHLAND COUNTY, VIRGINIA, *et al*.,	)	
	)	
Defendants.	)	

RESPONSIVE PLEADING

Defendants Board of Supervisors of Goochland County, Virginia (the "Board"); Planning Commission of Goochland County, Virginia (the "Planning Commission"); and Goochland County, Virginia (the "County"), by counsel, pursuant to Rule 3:8 of the Rules of the Supreme Court of Virginia and Code § 8.01-273, and in response to Plaintiffs' Complaint, file this Responsive Pleading consisting of: (1) a Motion Craving Oyer; and (2) Demurrers.

MOTION CRAVING OYER

1. A motion craving oyer is "a remedy afforded to a litigant who has been sued on a claim based upon a written document mentioned in a claimant's pleading but not made a part of the record." *Byrne v. City of Alexandria*, 298 Va. 694, 700 (2020). A document produced in response to the motion becomes part of the pleadings. *Id*. at 699. Although the remedy was initially limited to certain instruments—such as deeds, letters of probate, and other documents under seal—it has evolved over time to "include production of a much wider range of documents." *Id*.

2. Here, Plaintiffs' nine-count Complaint challenges the Board's November 6, 2025 adoption of (1) an amendment to the Goochland County Comprehensive Plan; and (2) an

amendment to the Goochland Zoning Ordinance[1] that established a Technology Overlay District ("TOD"). *See generally* Compl.

3. The Board's November 6 action followed months of exploration and engagement, including numerous citizen meetings and communications, a subject-specific TOD website regularly updated during the process, data collection, and revisions to the proposed TOD ordinance in response to citizen concerns. *See generally infra*, ¶¶ 17-18. While six exhibits related to these zoning amendments were attached to the Complaint, Plaintiffs leave off scores of other documents pertinent to the Board's action.

4. The Supreme Court of Virginia has made clear that, in zoning cases, it is proper to crave oyer of the entire legislative record and then consider that record on demurrer.

5. For example, in *Byrne*, the Supreme Court affirmed the trial court's sustaining of a demurrer after craving oyer of the zoning decision's legislative record. 298 Va. at 701-02; *see also Hartley v. Bd. of Supervisors of Brunswick Cnty.*, 80 Va. App. 1, 26 (2024) ("At this [demurrer] stage, we may also consider any exhibits included in the pleadings, ***including the legislative record brought in by the motion craving oyer***.") (emphasis added); *Resk v. Roanoke Cnty.*, 73 Va. Cir. 272, 274 (Roanoke Co. 2007) (granting motion craving oyer as to documents in the legislative record showing "what the Board considered and the process that the Board went through in making its decision to adopt the ordinance").

6. Defendants have compiled thousands of pages which they believe represent the entire legislative record for the challenged zoning amendments.[2] An index for the legislative record

[1] Chapter 15 of the Goochland County Code contains its zoning regulations and will herein be referred to as the "Zoning Ordinance" or "ZO."

[2] Defendants would welcome Plaintiffs' input if they believe that additional materials should be part of the legislative record.

is attached as **Exhibit 1**. A copy of the legislative record is being filed together with this pleading; a slip sheet identifies the video recordings (which are also being filed via USB drive).

7. Grant of this Motion will appropriately allow the Court to evaluate Plaintiffs' claims on demurrer, which will serve "the salutary purpose of avoiding the delay, expense and consumption of judicial resources attendant on trial preparation, trial and appeal in a case that was ill-founded in law." *Byrne*, 298 Va. at 699.

WHEREFORE, for the reasons above and as may be stated in any brief(s) filed in support and any argument made at a hearing, Defendants (i) Board of Supervisors of Goochland County, Virginia; (ii) Planning Commission of Goochland County, Virginia; and (iii) Goochland County, Virginia respectfully request that the Court grant their Motion Craving Oyer and consider the full legislative record related to the challenged zoning amendments on demurrer, and award them such other relief as the Court deems just and proper.

DEMURRERS[3]

8. The Board's adoption of the TOD and related comprehensive plan amendment are a model of good government in action. These amendments serve identified long-term goals, expanding the County's commercial tax base while preserving its rural nature. They were the product of extensive review, robust community outreach, and a commitment to openness and inclusiveness. At every turn, the Board informed the public about the proposed changes, actively sought feedback, and then listened to citizen suggestions and concerns. Based on the community feedback, the TOD standards were substantively revised. To illustrate, the maximum allowable noise from a TOD structure—*e.g.*, a data center—was ***lowered***, the maximum TOD building height was ***decreased***, and the TOD property setbacks/buffers were ***increased***.

9. Given the balancing of policy interests inherent in any zoning amendment, there will always be divergent views. That is reasonable, fair, and healthy in a democracy. But as the Court of Appeals of Virginia recently observed in a zoning case, "[d]isagreement with public policy . . . is to be registered principally at the polls." *Oak Valley Homeowners Ass'n v. Prince William Cnty. Bd. of Supervisors*, 85 Va. App. 382, 399 (2025) (quoting *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 286 (1984)). The appropriate remedy for Plaintiffs' dissatisfaction with the Board's decision is at the ballot box.

10. Although none of the Plaintiffs live within the TOD, they participated in the public process. Plaintiffs spoke at or attended public hearings, and communicated their views to the County via email. Ultimately dissatisfied with the Board's legislative judgment, Plaintiffs then

[3] Although the County and Planning Commission are not proper defendants to this action (*see infra*, ¶¶ 165-69), the other Demurrers are on behalf of all Defendants.

instituted this action in an attempt to invalidate the zoning amendments and forestall data center development.

11. The Complaint takes a scatter-shot approach over its nine Counts. As an initial matter, Plaintiffs generally lack standing as they have failed to allege particularized harm. And in specific Counts, Plaintiffs also improperly assert the rights of others (*i.e.*, property owners within the TOD) and/or violation of statutes that do not confer a private right of action.

12. On their purported merits, each Count also fails. Plaintiffs largely misconstrue the relevant statutory standards, asserting breach of requirements that do not exist. They also take inconsistent positions throughout the Complaint—legally and as a matter of policy. For example, they state that the TOD creates "new zoning districts," but then ignore these acknowledged delineations in asserting claims—such as breach of a so-called uniformity requirement in Count II. By way of another example, while the gravamen of Plaintiffs' claims is that data centers will generate increased noise and other alleged adverse impacts, Count IV actually objects that the amendments eliminated by-right data center development within the TOD. Likewise, Count V counter-intuitively complains about the TOD's efforts to mitigate noise and visual impacts from data center development.

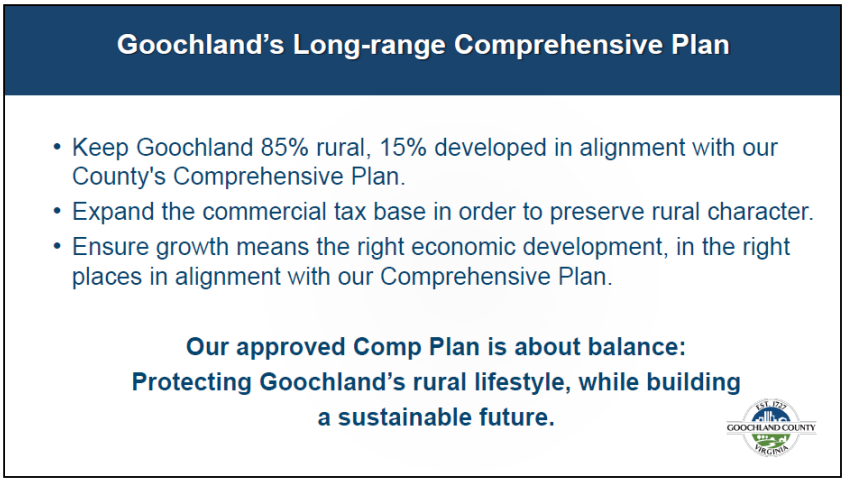
13. For these reasons and others, as will be discussed further below, none of Plaintiffs' claims have merit. The Complaint should be dismissed with prejudice.

BACKGROUND

The Board Worked to Advance Important Community Objectives

14. The Comprehensive Plan amendment and TOD advance the Board's long-term goals to (1) develop and promote the eastern part of Goochland County for industrial and commercial uses and (2) diversify and balance the tax base to alleviate the tax burdens on its

residents.[4] The TOD marries these two goals by encouraging high-revenue development in the eastern part of the County that will increase commercial tax revenue for the benefit of all citizens, while keeping most of Goochland rural. A slide from the November 6, 2025 Board meeting—where the amendments were adopted—is illustrative:[5]



15. The seeds of this plan were planted in 1975 when the Comprehensive Plan designated a "Planned Service Area for Eastern Goochland" to encourage industrial development. For the next several decades, the County took additional steps: creating a business park (West Creek Business Park) where many industrial uses are permitted by right, creating a service district

[4] The Board's goal is to have tax revenues funded 70% by residential taxes and 30% by commercial taxes. Prior to the TOD amendments, tax revenues were 82% residential and 18% commercial, thus placing a large tax burden on residents. **Ex. 1** at 4, *Town Halls*, District 5 Town Hall – September 22, 2025, Item No. 1.b. (Staff Presentation) (GOOCHLAND_04032).

[5] **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (Staff Presentation) (GOOCHLAND_03109). A PDF of this PowerPoint presentation is part of the legislative record (*see id.*, (GOOCHLAND_03092-03233), together with speaker notes from Sara Worley—Deputy County Administrator for Economic and Community Development for Goochland County—who delivered the presentation.

This same presentation (without speaker notes) is *available at* goochlandva.us/DocumentCenter/View/12702/Public-Hearings_Technology-Overlay-District--Technology-Zone_-BOS-11-2-25_FINAL?bidId=. To alleviate any text formatting issues, images below may be copied from the website presentation, with citations to the corresponding bates-numbered record.

(Tuckahoe Creek Service District "TCSD") and incurring significant debt to fund a sewage pump station, utility mains, and capacity charges, and then building that water and sewer infrastructure to support large industrial users in eastern Goochland. And the efforts continued to advance in 2015, when the Comprehensive Plan designated part of eastern Goochland–where the TOD is located–as the "Economic Driver" for the County.[6]

16. With the foundation laid for growth in eastern Goochland, the County began exploring ways to attract high quality and high revenue economic projects to that area. Technology businesses emerged as a target because they have the highest impact on taxes and high-quality jobs. High-tech businesses pay significant taxes, which helps to alleviate the tax burden on citizens and permits the County to maintain a high level of services and amenities to its residents. At the same time, focusing growth in one region of Goochland protects the County's rural character and advances the Board's goal of keeping 85% of Goochland rural.[7]

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[6] **Ex. 1** at 6, *Goochland's Long – Range Planning Documents*, Item No. 1 (Comprehensive Plan 2035) ("The [Tuckahoe Creek Service District, located in eastern Goochland County] is intended to serve as an economic driver for the County during the time horizon of this plan and beyond.") (GOOCHLAND_05420); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (GOOCHLAND_03110); *also* **Ex. 1** at 3 November 6, 2025 Board of Supervisors Public Hearing, Item No. 12 (Livestream Transcript) (noting that the Comprehensive Plan designated the eastern area as an economic driver for Goochland County) (GOOCHLAND_03358); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (Video) (same) (GOOCHLAND_03470 at 15:30).

[7] **Ex. 1** at 6, *Goochland's Long – Range Planning Documents*, Item No. 1 ("Through 2035, the County has designated that approximately 85% of the county will be in the Rural Enhancement Land Use Designation.") (GOOCHLAND_05421); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (GOOCHLAND_03108) ("It will help us concentrate our growth where we have the infrastructure to support it while protecting the other 85% of the County."); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 15 (Livestream Transcript) (same) (GOOCHLAND_03358); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (same) (GOOCHLAND_03470 at 14:15).

The Legislative Process

17. The legislative process for the November 6, 2025 zoning amendments was deliberate and thoughtful. It involved expertise and input from the County's professional staff as well as extensive public engagement. There were Planning Commission and Board meetings,[8] Planning Commission and Board public hearings,[9] two community meetings,[10] two town hall meetings,[11] neighborhood and citizen meetings,[12] extended mailings to residents in not only affected but adjacent neighborhoods,[13] staff review and response to citizen questions,[14] and a county-wide outreach (including a website with reams of information about both the substance and

[8] **Ex. 1** at 1, *Planning Commission & Board of Supervisors Public Meetings*, August 24, 2024 Join Board of Supervisors & Economic Development Authority Meeting, Item Nos. 1-5 (GOOCHLAND_00001 – 00197); **Ex. 1** at 1, July 1, 2025 Board of Supervisors Meeting, Item Nos. 1-3 (GOOCHLAND_00198-00236); **Ex. 1** at 1, August 21, 2025 Planning Commission Public Meeting, Item Nos. 1-8 (GOOCHLAND_00237-01865); **Ex. 1** at 2, October 7, 2025 Board of Supervisors Meeting, Item No. 1 (GOOCHLAND_02248-02263).

[9] **Ex. 1** at 1-2, September 18, 2025 Planning Commission Public Hearing, Item Nos. 1-14 (GOOCHLAND_01866 – 02170); **Ex. 1** at 2, Continuation of Planning Commission Public Hearing on September 25, 2025, Item Nos. 1-6 (GOOCHLAND_02171-02247); **Ex. 1** at 2-3, November 6, 2025 Board of Supervisors Public Hearing, Item Nos. 1-17 (GOOCHLAND_02264-03470).

[10] **Ex. 1** at 3, *Community Meetings*, July 7, 2025 Community Meeting, Item Nos. 1-6 (GOOCHLAND_03471-03495); **Ex. 1** at 3, September 8, 2025 Community Meeting, Item Nos. 1-10 (GOOCHLAND_03527-03990).

[11] **Ex. 1** at 4, *Town Halls*, District 5 Town Hall – September 22, 2025, Item Nos. 1.a-1.d. (GOOCHLAND_03991-04090); **Ex. 1** at 3-4, Countywide Town Hall – October 6, 2025, Item Nos. 1a.-1.e. (GOOOCHLAND_04091-04246).

[12] **Ex. 1** at 4, *Additional Citizen Meetings*, Item Nos. 1-4 (GOOCHLAND_04247-04253).

[13] **Ex. 1** at 3, *Community Meetings*, July 7, 2025 Community Meeting, Item Nos. 1-2 (Adjacent and Affected Property Owners Written Notices) (GOOCHLAND_03471-03474); **Ex. 1** at 3, September 8, 2025 Community Meeting, Item Nos. 1-2 (same) (GOOCHLAND_03527-03530).

[14] *E.g.*, **Ex. 1** at 4, *Community Meetings*, September 8, 2025 Community Meeting, Item No. 6 (Participant Comment Cards) (GOOCHLAND_03634-03833); **Ex. 1** at 4, *Additional Information for Citizens: Website and Additional Media*, Item No. 1.c (Summary of Citizen Comments) (GOOCHLAND_04661-04765).

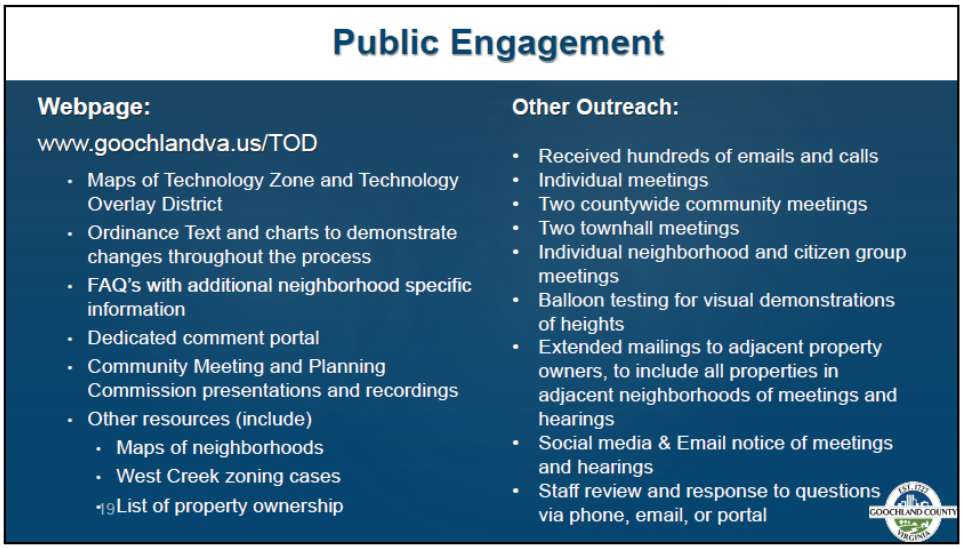
process of the TOD proposal, as well as e-newsletters and social media posts).[15] More than 1,000 residents attended these various meetings and public hearings,[16] where they provided input and asked questions. The TOD website actively requested and collected citizen comments and questions from July 2025 through adoption of the ordinance that November. Citizens also directed questions and comments to County Staff, who responded and, based on citizen input, suggested changes to the proposed legislation to address citizen concerns.[17] Another slide from the November 6, 2025 Board meeting highlights this extensive level of public engagement:[18]

[15] **Ex. 1** at 4-5, *Additional Information for Citizens: Website and Additional Media*, Item Nos. 1-4 (GOOCHLAND_04254-04847).

[16] **Ex. 1** at 1, *Planning Commission & Board of Supervisors Public Meetings*, August 21, 2025 Planning Commission Public Meeting, Item No. 5 (Speaker Sign in Sheets) (GOOCHLAND 00269-00292); **Ex. 1** at 2, September 18, 2025 Planning Commission Public Hearing, Item No. 10 (Speaker Sign in Sheet) (GOOCHLAND_01866–01873); **Ex. 1** at 2, Continuation of Planning Commission Public Hearing on September 25, 2025, Item No. 1 (Speaker Sign in Sheets) (GOOCHLAND_02172-02186); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 9 (Speaker Sign in Sheets) (GOOCHLAND_03081-03091); **Ex. 1** at 3, *Community Meetings*, July 7, 2025 Community Meeting, Item No. 5 (Speaker Sign in Sheets) (GOOCHLAND_03492-03494); **Ex. 1** at 4, September 8, 2025 Community Meeting, Item No. 5 (Speaker Sign in Sheets) (GOOCHLAND_03614-03633); **Ex. 1** at 4, *Town Halls*, Countywide Town Hall – October 6, 2025, Item No. 2.b (Citizen Sign in Sheets) (GOOCHLAND_04093-04108).

[17] **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (GOOCHLAND_03121-03126) (explaining changes made to original ordinance through community input); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 15 (Livestream Transcript) ("Since the beginning of this process in July, we have been working hard to digest all the feedback, research the issues, and provide an informed proposal for the Board to consider.") (GOOCHLAND_03359); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (Video) (same) (GOOCHLAND_03470 at 16:25).

[18] **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (Staff Presentation) (GOOCHLAND_03112).



18. The County's extensive community outreach was not a "check-the-box" exercise. It was a thorough, good-faith, and collaborative process, during which substantive changes were made to the TOD amendment in response to citizen concerns and suggestions. The history of these changes is detailed in the November 6, 2025 Board meeting slideshow, and includes changes to: (1) energy generation; (2) the TOD West area; (3) (reductions in) maximum noise decibel levels; (4) additional requirements regarding generator noise; (5) (lowered) building height; (6) use of public water and wastewater; (7) (increased) setbacks and buffers; (8) (limitations on) residential road access; (9) (limitations on) construction hours; and (10) energy storage.[19]

19. The vast legislative record also documents the attention County Staff and the Board gave to the myriad of considerations that arise from proposed zoning legislation. In determining an appropriate location for the TOD, County Staff and the Board considered existing zoning, the

[19] **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 GOOCHLAND_03121-03126) (explaining changes made to original ordinance through community input); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 15 (Livestream Transcript) (same) (GOOCHLAND_03359 – 03363); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (Video) (same) (GOOCHLAND_03470 at 20:00).

Comprehensive Plan, the best uses of property, quality of life, the rural character of the County, surrounding neighborhoods, and the health and welfare of its residents.[20] They also considered the County's existing infrastructure and public utility capacity—including water, sewer, electrical, natural gas, and roads.[21] And the County considered the impacts of such development on the environment, neighborhoods, and residents—including property values and tax revenue.[22] The County also engaged an engineering firm to conduct a "balloon test" to assess the visual impacts of building heights with certain setbacks and buffers.[23] Based on this analysis, County Staff determined that the County's infrastructure and public utilities had capacity and could support this development, and that the TOD and Comprehensive Plan amendments would advance the Board's long-term goals for the benefit of the entire community.[24]

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[20] *E.g.*, **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (GOOCHLAND_03135-03138) (explaining siting considerations for TOD); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 15 (Livestream Transcript) (same) (GOOCHLAND_03363); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (Video) (same) (GOOCHLAND_03470 at 29:09).

[21] **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (GOOCHLAND_03137) (detailing County Staff analysis); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 15 (Livestream Transcript) (same) (GOOCHLAND_03363); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (Video) (same) (GOOCHLAND_03470 at 28:45).

[22] **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (GOOCHLAND_03113) (detailing considerations relating to environment, development standards, property taxes, and revenue); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 15 (Livestream Transcript) (same) (GOOCHLAND_03358-59); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (Video) (same) (GOOCHLAND_03470 at 17:00).

[23] **Ex. 1** at 6, *Studies, Data & Other Analysis*, Item No. 4 (Balloon Test – September 3, 2025) (GOOCHLAND_06419-06451).

[24] **Ex. 1** at 6, *Studies, Data & Other Analysis*, Item No. 2 (Talking Points to Board of Supervisors) (explaining that Goochland has sufficient water capacity for high-value development and that the TOD was "strategically selected" to "advance the County's economic development objectives") (GOOCHLAND_06393-06399).

The Technology Overlay District

20. An overlay district is a zoning district that overlays, but does not replace the existing (underlying) zoning districts. Overlay districts promote specific types of development which are paired with unique development standards. The TOD is not the County's first overlay district, and overlay districts are used in other localities in Virginia.[25]

21. True to this purpose, the TOD development standards were designed to protect areas outside the TOD—as well as properties inside the TOD that do not choose to develop with high-industrial uses—by requiring buffers, setbacks, screening, open space, height restrictions, noise limits, architectural standards, and the like. In this way, the development standards address potential negative impacts from high-technology uses, protect neighboring properties, and ensure quality development.[26] Uses permitted only through the TOD must comply with these standards. By contrast, properties in the TOD area which develop permitted uses in the underlying districts are only required to comply with the standards for the underlying districts rather than the development standards of the TOD. A map of the TOD boundaries is shown below:[27]

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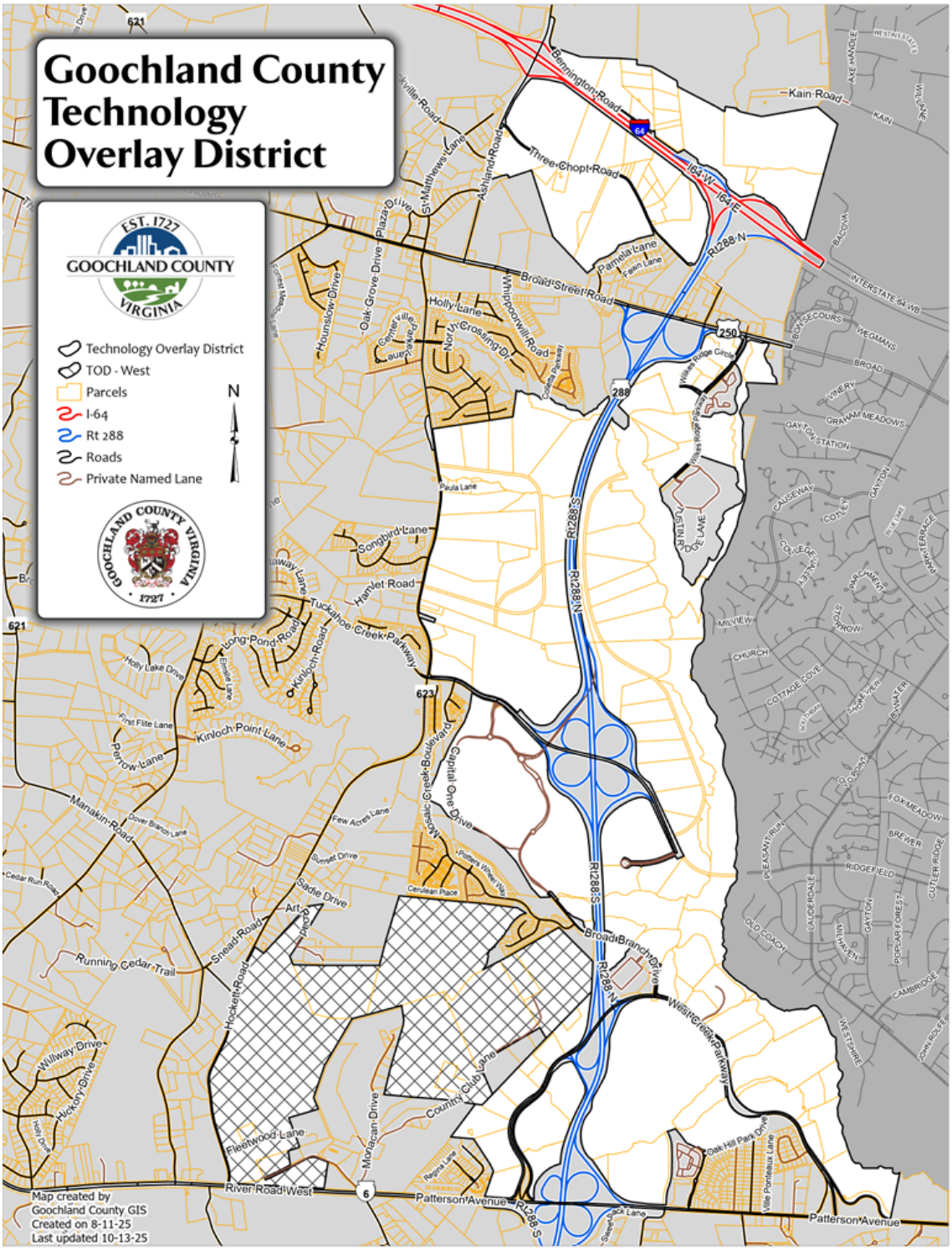
[25] *See, e.g.*, **Ex. 1** at 6, Item No. 5 (Benchmarking) (Louisa County's TOD) (Goochland_07350-07358); **Ex. 1** at 6, Item No. 5 (Benchmarking) (Fauquier County's "Planned Commercial Industrial District") (GOOCHLAND_07366-07373); Goochland County Ordinance § 15-431, *et seq.* (establishing Village Center Overlay District).

[26] *See* **Ex. 1** at 3, *Community Meetings*, July 7, 2025 Community Meeting, Item No. 6 (Staff Presentation) (explaining development standards) (GOOCHLAND_03506-03511); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (GOOCHLAND_03154-03186) (detailing development standards); **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 15 (Livestream Transcript) (same) (GOOCHLAND_03366 – 03370); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (Video) (same) (GOOCHLAND_03470 at 40:00-1:00:00).

[27] *See* Ex. C to Compl. at 4; *also* **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 13 (Approved Ordinance # 6471 Adopting Technology Overlay District Ordinance and Comprehensive Plan Amendment) (containing map of TOD) (GOOCHLAND_03292).



22. Certain uses are permitted by right in the TOD, such as public utilities, data centers, energy storage facilities, and advanced manufacturing. By-right development provides certainty

that encourages businesses to make a long-term investment in the community.[28] Notably, data centers were permitted by right in the underlying Industrial, Limited, M-1 zoning district ***before the TOD***, but without the protections of the TOD development standards.

The Amendments Align with the Board's Goals

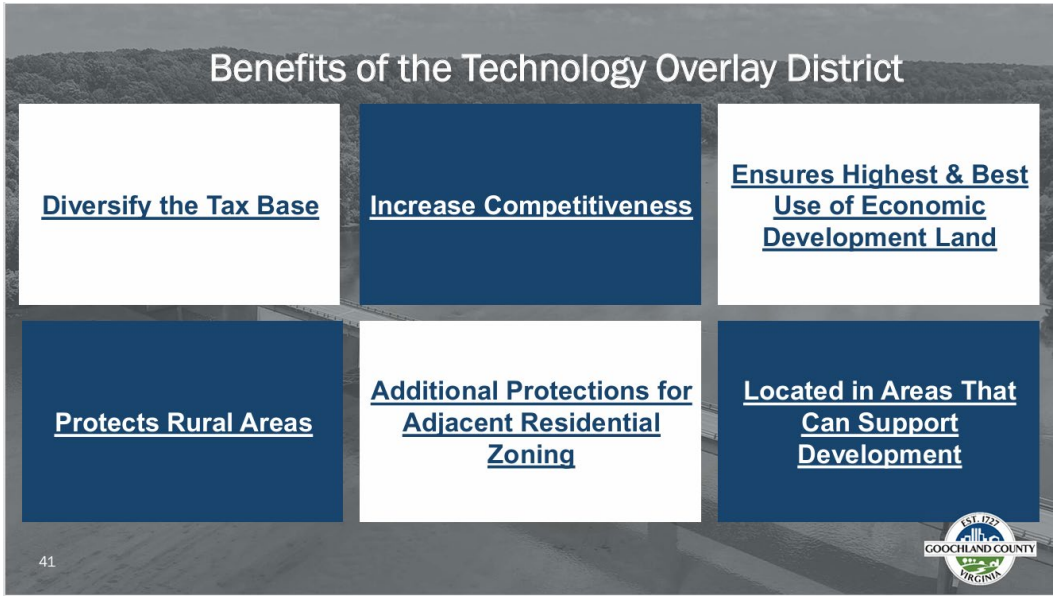
23. The Comprehensive Plan designates the entire eastern portion of Goochland County as its Designated Growth Area, and the majority of property in the TOD as Prime Economic Development, industrial, flexible, or office. Consistent with the Comprehensive Plan, the placement of the TOD encourages development in the most eastern area of the County, but preserves 85% of the County as rural, while also advancing the county-wide strategy to grow wisely, diversify the tax base, and ensure long-term sustainability. In fact, the TOD occupies only about 2% of County land.[29]

24. In summary, the TOD ordinance reflects the Board's careful balancing and legislative judgment, and is intended to achieve the following benefits:[30]

[28] **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (explaining that by-right opportunities give businesses certainty and encourage high-value investment) (GOOCHLAND_03111).

[29] **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 ("The proposed TOD boundary encompasses around . . . 2% of the total County . . . .) (GOOCHLAND_03137); **Ex. 1** at 4, *Community Meetings*, September 8, 2025 Community Meeting, Item No. 9 (Livestream Transcript) (same) (GOOCHLAND_03959); **Ex. 1** at 3, November 6, 2025 Board of Supervisors Public Hearing, Item No. 17 (Video) (same) (GOOCHLAND_03470 at 31:43).

[30] **Ex. 1** at 3, *Planning Commission & Board of Supervisors Public Meetings*, November 6, 2025 Board of Supervisors Public Hearing, Item No. 10 (GOOCHLAND_03135).



LEGAL STANDARD

25. A demurrer tests whether a pleading states a claim for which the requested relief may be granted. *Assurance Data, Inc. v. Malyevac*, 286 Va. 137, 145 (2013); *see also* Code § 8.01-273(A) ("In any suit in equity or action at law, the contention that a pleading does not state a cause of action or that such pleading fails to state facts upon which the relief demanded can be granted may be made by demurrer.").

26. Thus, in reviewing a demurrer, the court will accept as true all factual allegations made with "sufficient definiteness." *Patterson v. City of Danville*, 301 Va. 181, 197 (2022) (quotation omitted). This principle has two important limitations. First, while the court will accept as true reasonable inferences from the facts alleged, it will not accept unreasonable inferences—that is, inferences that are strained, forced, or contrary to reason. *Id*. Second, courts "do not accept the veracity of conclusions of law camouflaged as factual allegations or inferences." *Id*. (quotation omitted).

27. On demurrer, the Court may also consider documents made part of the record through a motion craving oyer. *See Byrne*, 298 Va. at 699-702 (discussing oyer-demurrer remedy,

and affirming judgment sustaining demurrer); *see also Ward's Equipment, Inc. v. New Holland N. Am., Inc.*, 254 Va. 379, 382 (1997) ("When a demurrant's motion craving oyer has been granted, the court in ruling on the demurrer may properly consider the facts alleged as amplified," ignoring allegations contradicted by documents that are part of the pleadings).

ARGUMENT

Plaintiffs Lack Standing

28. Standing is "'a preliminary jurisdictional issue'" having no relation to the merits of the action. *Morgan v. Bd. of Supervisors*, 302 Va. 46, 58-59 (2023) ("*Morgan I*") (standing "is part of the common understanding of what it takes to make a justiciable case.") (citation omitted).

29. "In its constitutional dimension, the concept of standing protects 'separation-of-powers principles' and 'prevent[s] the judicial process from being used to usurp the powers of the political branches.'" *Id.* at 58 ("[T]he standing requirement thwarts 'efforts to convert the Judiciary into an open forum for the resolution of political or ideological disputes about the performance of government.'") (citation omitted).

30. As a plaintiff must have standing at every stage of the case, beginning with the pleading stage, *Seymour v. Roanoke County Bd. of Supervisors*, 301 Va. 156, 166 n.3 (2022), standing is properly decided on demurrer. *Id.*; *Zinner v. Wash. Gas Light Co.*, 85 Va. App. 220, 239 (2025) (standing is a question of law).

31. Standing to challenge zoning determinations is governed by the well-established test in *Friends of the Rappahannock v. Caroline County Bd. of Supervisors*, 286 Va. 38, 48 (2013). The two-pronged *Friends* test requires that: (1) "the complainant must own or occupy real property within or in close proximity to the property that is the subject of the land use determination, thus establishing that it has a direct, immediate, pecuniary, and substantial interest in the decision" and

(2) "the complainant must allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a burden or obligation upon the petitioner different from that suffered by the public generally." *Id.* at 48 (citations omitted).

32. *Friends* also requires a plaintiff to allege a "factual background upon which an inference can be drawn that [this] particular use of the property would produce such harms and thus impact the [plaintiffs]." *Id.* at 49. And, there must also be a causal connection: the harm must "be fairly traceable to the challenged action," *Morgan I*, 302 Va. at 64-65 (citation omitted), and "must be tied to the particular use of the property by the [person] authorized to use it." *Id.* at 61.

33. Turning to the Complaint, each of the four Plaintiffs allege standing in conclusory, copy-and-paste recitations. Assuming (without agreeing) that Plaintiffs satisfy the proximity prong of the *Friends* test, they do not satisfy the second prong because they fail to allege particularized, nonspeculative harm.

34. *First*, Plaintiffs do not live or own property in the TOD, Compl., ¶¶ 1-4, and therefore are not harmed by any land-use requirement imposed on property owners in the TOD.

35. *Second*, Plaintiffs' generic allegation that the TOD "materially alters the permitted uses within the district [and] changes the legal and practical outcomes of future rezoning applications," Compl., ¶¶ 1- 4, does not allege ***any*** harm at all, let alone ***particularized*** harm unique to them.

36. *Third*, it is wholly insufficient to allege harm from the "elected governing body and appointees" who are allegedly "act[ing] unlawfully, in violation of applicable local ordinances and Virginia law," as the cookie-cutter allegations in the Complaint do. Compl., ¶¶ 1-4. Such purported harms are disputed by Defendants, but even if they could be true, are not unique to ***these*** plaintiffs; instead, if true, they would be applicable to all citizens. *See Va. Beach Beautification Comm'n v.*

Bd. of Zoning, 231 Va. 415, 419 (1986) ("[I]t is not sufficient that the sole interest of the petitioner is to advance some perceived public right or to redress some anticipated public injury when the only wrong he has suffered is in common with other persons similarly situated."). Nor are these allegations "tied to the particular use of the property by the [person] authorized to use it." *Morgan I*, 302 Va. at 61.

37. *Fourth*, Plaintiffs' bare allegations that property values will decrease do not establish standing. *See Oak Valley*, 85 Va. App. at 391 ("'We do not hold that a bare allegation of diminished property value, no matter the context, will suffice to establish standing.'") (citation omitted).[31]

38. *Fifth*, Plaintiffs allege "increased noise, pollution and traffic" from "the imminent risk of intensive industrial development immediately adjacent to [or in close proximity to their] land," Compl., ¶¶ 1-4. As Plaintiffs fail to identify any permitted or proposed "industrial development" near them, these claims are too speculative and generalized to confer standing. *See Morgan I*, 302 Va. at 61 (allegations to support standing "must be something more than an ingenious academic exercise in the conceivable.") (quoting *Warth v. Seldin*, 422 U.S. 490, 509 (1975)).

39. *Sixth*, Plaintiffs' "[o]n information and belief" allegations are too generalized to satisfy the "factual background," specificity, and causal nexus requirements for standing. Compl.,

[31] In marked contrast to Plaintiffs' naked assertion of diminished property values, the *Oak Valley* complaint: "referenced real estate agents who 'are experiencing buyer resistance when considering listings of homes, like those of Plaintiffs'"; alleged "that Oak Valley had already experienced two instances in which 'a potential buyer chose another community . . . over Oak Valley because of the proximity of Oak Valley' to the subject area"; and alleged, "perhaps most significantly, the landowners cited 'the opinion of real estate professionals' that the passage of the comprehensive-plan amendment 'by itself,' had already 'caused Plaintiffs an ***immediate, present diminution in their residential real estate values***.'" 85 Va. App. at 391. The Court of Appeals found these allegations, among others, sufficient to confer standing. *Id.*

¶ 25. There are no specific allegations about the nature, scope, or extent of on-site "lighting and operations," "year-round industrial traffic," "mature tree canopy" removal, or "ongoing construction impacts" or how they will harm these Plaintiffs off-site. *Id.*[32] Similarly, the generalized allegation that there would be on-site "installation of high-voltage electrical infrastructure" does not identify any harm—let alone particularized harm—to these Plaintiffs where they live. *Id.* And their concern about "mechanical noise" does not allege ***how*** they could be harmed given the noise-mitigation provisions of the TOD. Compl., ¶¶ 32, 80-83, 97; *see Friends*, 286 Va. at 50 (finding no standing where a permit required the mining operation to "adhere to county restrictions regarding pollution, particulate matter, and noise"). Nor are there allegations that such noise would exceed acceptable noise levels ***off-site*** to which the general public is exposed.[33] *Compare Morgan I*, 302 Va. at 60 (complaint specifically alleged that noise from Wegman's facility would exceed levels permitted by local ordinance).

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[32] This Complaint does not come close to alleging the particularized harm needed for standing. For example, the plaintiffs in *Morgan I*, who lived directly adjacent to (and within 1200 feet of) a Wegmans distribution facility, had standing because they alleged particularized harm from: 860 additional tractor-trailer trucks per day in the neighborhood; tractor trailer traffic on specific feeder roads; flooding in a specific area where their children play; chronic, excessive noise from truck back-up alarms in violation of a local ordinance (according to a sound study); and "localized night-sky" pollution from taller light poles in a nearby parking area. 302 Va. at 60. Similarly, the plaintiffs in *Seymour* were adjacent property owners to a wildlife center. 301 Va. at 159. They had standing because they alleged harm from: an additional 55 cars on the easement daily; a 20-50% increase in traffic; speeding cars that almost hit their children; increased maintenance costs of their easement, including gravel replacement; and increased dust that necessitated power-washing their homes and more frequent changing of air filters (three times as much for one plaintiff). *Id.* at 167.

[33] "It is not enough for [plaintiff] to claim that dust and noise from the concrete batch plant will affect her. [She] must instead allege that the dust and noise affect her in a way distinguishable from those around her—the general public—and that the concrete batch plant creates 'sufficient noise, particulate matter, or pollution *off site* to cause actual harm.'" *Claunch v. Botetourt Cnty. Bd. of Supervisors,* No. 0xxx-xx-3, 2025 Va. App. LEXIS 362, at *20 (June 24, 2025) (quoting *Friends*, 286 Va. at 49); *see Oak Valley*, 85 Va. App. at 391 (complaint alleged "'quantitative analysis and modeling' that data centers will 'increase the noise Plaintiffs currently experience to over 75 decibels,' making it 'similar to the constant noise experienced while standing 50 feet from Interstate-66 (a heavily traveled highway)'").

40. In short, Plaintiffs' allegations are insufficient to establish standing because they identify no particularized harm unique to ***these Plaintiffs*** or any off-site harm they will suffer. Instead, Plaintiffs offer only conclusory, generic, and speculative allegations of harm.

41. Plaintiffs' alleged harms are as speculative and unparticularized as those in *Friends*, which were held insufficient to establish standing. 286 Va. at 49. There, the plaintiffs were landowners near a permitted sand and gravel mining operation. *Id.* at 41. They alleged that the mining operation would interfere with their hunting, fishing, and boating activities; that they would be subjected to dust and noise from the mining operation; that the mining operation might create a stagnant pond; and that the site itself would ruin the scenic beauty of the area. *Id.* at 42-43. The Supreme Court affirmed the trial court's dismissal of the complaint on a demurrer because the plaintiffs "presented conclusory allegations as to possible harms" and alleged "no factual background upon which an inference can be drawn that [this] particular use of the property would produce such harms and thus impact the[m]." *Id.* at 49. The *Friends* complaint failed to provide sufficient specificity about harm; instead, it "generalize[d] about industrial sites" or "speculate[d] about potential harms associated with a permitted use." *Morgan I*, 302 Va. at 61.

42. As in *Friends*, Plaintiffs here "failed to offer ***any*** factual background from which to infer that [uses in the TOD] would cause sufficient noise, [light, traffic] . . . or pollution ***off site*** to cause actual harm," *Friends*, 286 Va. at 49, and resorted to generalizations about industrial uses allowed in the TOD. *Morgan I*, 302 Va. at 61.

43. In short, the Complaint should be dismissed because Plaintiffs fail the *Friends* test. They do not allege facts demonstrating that they will likely suffer ***any*** "injury or potential injury not shared by the general public." *Friends*, 286 Va. at 49. Their remedy is at the ballot box.

See Morgan I, 302 Va. at 58 (the standing doctrine prevents "'the judicial process from being used to usurp the powers of the political branches'") (citation omitted).

Count I Fails to State a Claim

44. Count I contends that the zoning amendments violated various statutory advertisement, notice and public hearing requirements. None of Plaintiffs' arguments have merit.

45. *First*, Plaintiffs argue that the Board's published advertisement (Exhibit B to Complaint) "failed to specify that persons affected may appear and present their views to the Board." Compl., ¶ 40. Plaintiffs misapprehend the relevant statutory language.

46. Section 15.2-2204(A) provides that an advertised "notice shall specify the time and place of hearing at which persons affected may appear and present their views." Code § 15.2-2204(A).

47. Under § 15.2-2204(A)'s plain meaning then, all that is required is for the advertised notice to "***specify*** the ***time and place*** of [the] hearing." *Id*. (emphasis added). That is precisely what the Board's advertisement does:

PUBLIC HEARING NOTICE

Goochland County Board of Supervisors
Public Meeting
Thursday, November 6, 2025, 6:30 PM
Goochland High School
3250 River Rd. West, Goochland, VA 23063
High School Auditorium
You may be able to view county meeting at:
https://www.goochlandva.us/1154/County-Meetings

Ex. B to Compl. As depicted above, the "**PUBLIC HEARING NOTICE**" states that the Board's public meeting to consider adoption of the zoning amendments will be held on November 6, 2025 a 6:30 p.m., at Goochland High School's auditorium.

48. Plaintiffs focus on the words "at which persons affected may appear and present their views" in § 15.2-2204(A), and appear to contend they must be recited verbatim in the advertised notice. *See* Compl., ¶ 40. Plaintiffs are mistaken.

49. That language explains ***the reason why*** the "time and place" of a public hearing must be specified in the advertisement—*i.e.*, so that "persons may appear and present their views." Not only is that clear from the statutory language, but the Court of Appeals recently made this same interpretation: "Code § 15.2-2204(A) is ***entirely focused on notice*** and what is required for adequate notice such that 'persons affected may appear and present their views.'" *Oak Valley*, 85 Va. at 395-96 (emphasis in original) (quoting *Morgan v. Board of Supervisors*, 83 Va. App. 720, 739 (2025) ("*Morgan II"*) and Code § 15.2-2204).

50. In other words, § 15.2-2204(A) notice—here, specifying the "time and place" of a public hearing—is required "***such that*** 'persons affected may appear and present their views.'" *Oak Valley*, 85 Va. at 395 (citation omitted). The ability for citizens to participate in the public process is the "end," identifying the public hearing's "time and place" in the advertised notice is the means to achieve that end.

51. In addition, the Board's advertisement is captioned "**PUBLIC HEARING NOTICE**"—in bold and with capitalized letters—and further states (in bold) that there will be a "**Public Meeting**." The plain meaning of a "public hearing" and "public meeting" is clear: the Board will convene on November 6, 2025 at 6:30 p.m. about the proposed zoning amendments, and this meeting is open for public participation. As the Supreme Court affirmed when reviewing § 15.2-2204(A), "[n]o particular words are required to satisfy the statute." *Gas Mart Corp. v. Bd. of Supervisors of Loudoun Cnty*., 269 Va. 334, 348 (2005).

52. *Second*, Plaintiffs allege that the Board's advertised notice did not comply with certain § 15.2-2204(B) notice requirements for changes in the zoning map classification of over 100 parcels of land.[34] *See* Compl., ¶¶ 39-40; *see also id*., ¶ 11 (alleging that the TOD "would change the zoning map classification of over one hundred parcels of land").

53. In relevant part, § 15.2-2204(B) provides:

> When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, the advertisement shall include the street address or tax map parcel number of the parcels as well as the approximate acreage subject to the action. For more than 100 parcels of land, the advertisement may instead include a description of the boundaries of the area subject to the changes and a link to a map of the subject area.

Code § 15.2-2204(B). Accordingly, if more than 100 parcels of land are affected, instead of listing addresses or tax IDs, "the advertisement may instead include a description of the boundaries of the area subject to the changes and a link to a map of the subject area." *Id*.

54. Here, the Board's advertisement denotes that the "[a]mendment to the Comprehensive Plan related to the establishment of a Technology Overlay District, and an amendment to the Zoning Ordinance" are "Countywide." Ex. B to Compl. The advertisement also provided a link to "www.goochlandva.us/TOD," where detailed information about the proposed amendments—including a map of the subject area—could be found. *Id*.[35]

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[34] For purposes of these Demurrers only, Defendants assume that the zoning amendments changed the zoning map classification of over 100 parcels of land; otherwise, Defendants reserve their rights to contest this allegation.

[35] S*ee also* **Ex. 1** at 4, *Additional Information for Citizens: Website and Additional Media*, Website for Technology Overlay District & Technology Zone Ordinances, Item No. 1.a. (Website Updates) (showing information contained on website over time) (GOOCHLAND_04254-04275).

55. The Board's advertisement complied with § 15.2-2204(B). As an initial matter, it described "the boundaries of the area subject to the changes." The amendments to the Comprehensive Plan and the Zoning Ordinance are connected, and both explicitly relate to the TOD. There is no question that an amendment to the County's Comprehensive Plan has a "Countywide" impact (and Plaintiffs do not contend otherwise). Thus, the "area subject to the change***s***" (plural) is accurately described. And the linked materials included a detailed map of the TOD.[36]

56. Moreover, any contrary argument by Plaintiffs about the advertisement's "description of the boundaries of the area subject to the changes" would be fundamentally inconsistent with their claims. To be clear, ***none of the Plaintiffs live in the TOD***. Compl., ¶¶ 1-4 (listing the Plaintiffs addresses and alleging that each is an "***adjacent*** property owner and taxpayer" or a "property owner in ***close proximity*** and taxpayer"). Rather, all Plaintiffs allege impact to their property interests (outside the TOD) from potential data center development within the TOD. *Id*.; *see also supra*, ¶¶ 31-43.

57. If anything, the Board's advertisement for the Zoning Ordinance amendment related to the TOD was ***over-inclusive***,[37] and thus would have generated ***greater*** public participation—including by citizens who, like Plaintiffs, did not reside within the TOD.

58. *Third*, Plaintiffs claim that "the ***affidavits*** filed by the representative of the local planning commission attesting to the fact that written notices were made to affected property

[36] *See* **Ex. 1** at 4, *Additional Information for Citizens: Website and Additional Media*, Website for Technology Overlay District & Technology Zone Ordinances, Item No. 1.a. (Website Updates) (showing proposed maps of TOD and Technology Zone) (GOOCHLAND_04254-04275).

[37] This is not a situation where a plaintiff claims an advertisement described the subject geographic area too narrowly, such that property owners might not know the proposed change affected them. Quite the opposite; every County property owner would have been on notice about the TOD amendments and their potential impact.

owners were vague, inaccurate and confusingly defective," and complain that "the ***affidavits*** were also created after the fact on November 21, 2025." Compl., ¶ 41 (emphasis added). Plaintiffs fail to state any claim related to the affidavits.

59. In relevant part, § 15.2-2204(B) states:

> One notice sent by first-class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local planning commission ***shall make affidavit that such mailings have been made and file such affidavit with the papers in the case***.

Code § 15.2-2204(B) (emphasis added). Plaintiffs acknowledge that affidavits of written notice for the Board's November 6, 2025 public hearing are part of the record of this case. *See* Compl., ¶ 41 & Ex. E. That is dispositive, as § 15.2-2204 does not prescribe any requirements for the affidavit's form or timing.[38]

60. *Fourth*, Plaintiffs incorrectly contend that the written notices provided to Henrico County—as an adjoining locality—violated Code § 15.2-2204(C). Compl., ¶¶ 42-43.

61. In relevant part, § 15.2-2204(C) provides:

[38] Notably, Count I does not allege any written notice violation. *See* Compl., ¶¶ 35-51. That is for good reason. *First*, the affidavit attesting to the requisite mailings should end the inquiry, particularly in light of the statutory safe harbor—following immediately after the affidavit language—that exempts any "inadvertent failure" to give a required written notice. *See* Code § 15.2-2204(B). *Second*, as discussed above, because no Plaintiffs own a "parcel of land" within the TOD, no written notice to any Plaintiff was required. *See id*. *Third*, even if required, Plaintiffs' actual notice and/or participation in the November 6, 2025 Board meeting is a waiver. *See id*. ("A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section."); GOOCHLAND_03084, GOOCHLAND_03086, and GOOCHLAND_03081 (speaker sign-in sheets for the Board's November 6, 2025 meeting listing Plaintiffs Haas, Knisley, and Minnick); GOOCHLAND_03467 (photo showing Plaintiffs Reed and Minnick at the November 6, 2025 meeting); **Exhibit 2** (a close-up and circled version of this photograph); GOOCHLAND_04840-04844 (October 21, 2025 and October 23, 2025 emails from a "Technology Overlay District" list-serv created by the County, which provided targeted notice to interested citizens, including Plaintiffs Knisley, Haas, and Minnick).

> When a proposed comprehensive plan or amendment thereto; [or] a proposed change in zoning map classification . . . involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local planning commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.

Code § 15.2-2204(C). Again, Plaintiffs acknowledge that written notice was provided to Henrico County. *See* Compl., ¶ 43 & Ex. F. Their vague complaints about the manner of the written notice (*see* Compl., ¶ 43) fall flat, as the statute imposes no such requirements.

62. Further, as Code § 15.2-2204(C) provides that its written notice is to an "adjoining locality"—not Goochland County property owners—Plaintiffs not only have suffered no particularized harm that could be different from the general public, *see supra*, ¶¶ 31-43, but as a matter of law cannot assert the § 15.2-2204 notice rights of third-parties. *Drewry v. Bd. of Supervisors of Surry Cnty.*, 84 Va. App. 479, 492 (2025) ("Code § 15.2-2204 does not create a private right of action independent of a violation of ***the claimant's own notice rights***.") (emphasis added).

63. *Fifth*, primarily citing Code § 15.2-1433, Plaintiffs claim that the zoning amendments adopted by the Board could not vary from the proposed amendments made available for public inspection prior to the November 6, 2025 hearing. *See* Compl., ¶¶ 44-47. Plaintiffs again misapprehend the relevant law.

64. Section 15.2-2285(C) specifically authorized the Board to modify the proposed zoning amendments. So long as the requisite public hearing is held, then "the governing body may make appropriate changes or corrections in the ordinance or proposed amendment." Code § 15.2-2285(C). That only makes sense. A proposed zoning amendment is not *fait accompli*. That is the very purpose of the public hearing—so that the Board can consider whether to adopt the proposed

amendment and/or make any changes. *See Arogas, Inc. v. Frederick Cnty. Bd. of Zoning Appeals*, 280 Va. 221, 228 (2010) ("Code § 15.2-2285(C) enables local governments to consider comments that citizens or property owners articulate during public hearings and to exercise legislative prerogatives to respond to those comments . . . .").[39]

65. Plaintiffs' focus on § 15.2-1433 is misplaced. *See* Compl., ¶ 44. As indicated by its title, § 15.2-1433 generally pertains to the wholesale "[c]odification and recodification of ordinances." Code § 15.2-1433 ("Any locality may codify or recodify any or all of its ordinances."). As part of that codification/recodification process, no substantive changes may be made to the ordinance on the books at that time. Section § 15.2-1433 simply does not govern amendments to a zoning ordinance.

66. In fact, § 15.2-1433 specifically defers to the more specific zoning statutes for ordinance amendments, stating that any such amendments must be noticed and adopted "as provided by the Code of Virginia for adoption and amendment of zoning and subdivision ordinances"—*e.g.*, pursuant to Code § 15.2-2204 and Code § 15.2-2285. And as demonstrated above, the Board was authorized pursuant to § 15.2-2285(C) to make changes—including substantive ones—after the public hearing.[40]

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[39] While *Arogas* involved changes to a proffer made after a public hearing, the same principles apply to zoning amendments. To wit, in *Arogas* the Supreme Court held that § 15.2-2285(C) applied because the underlying rezoning in question "was an amendment to the County's zoning ordinance." *Arogas*, 280 Va. at 228; *see also id*. at 227 ("The Board is not required to hold an additional public hearing each time the Board amends a proffer. Otherwise, the public hearing process may never come to a conclusion.").

[40] Further, § 15.2-2285 "is the enabling statute for ***zoning ordinances***." *Gas Mart*, 269 Va. at 349 (emphasis added). To the extent that there is any conflict—which there is not— with § 15.2-1433 (a statute of more general application), then § 15.2-2285(C) must prevail. *See Gas Mart*, 269 Va. at 349-50 (holding "that Code § 15.2-1427(F), a statute of general application, does not apply to the adoption of zoning ordinances;" rather, §§ 15.2-2204(A) and 15.2-2285(C) controlled).

67. To the extent that Count I could be construed as including any additional arguments relating to notice, Defendants further demur because Plaintiffs failed to identify the violation of any applicable standard.

Count II Fails to State a Claim

68. In Count II, Plaintiffs allege that the TOD violates a so-called "uniformity requirement" in Code § 15.2-2282. Compl., ¶¶ 52-59. This statute provides: "All zoning regulations shall be uniform for each class or kind of buildings and uses throughout each district, but the regulations in one district may differ from those in other districts." Code § 15.2-2282.

69. In short, Plaintiffs contend that because (i) the TOD is an overlay district which encompasses more than one underlying zoning district, and (ii) because a TOD overlay regulation differs in "TOD West," § 15.2-2282 was violated. Plaintiffs' argument fundamentally misapprehends the meaning of an overlay district.

70. As stated in the ordinance adopting the zoning amendments, "[t]he TOD is an overlay of existing zoning districts, regardless of classification." Ex. C to Compl. at 2-3 ("Sec. 15-488").[41] This means that "[t]he TOD overlays the existing zoning district and imposes additional or different restrictions on the use of and standards for the property." *Id*. at 3 (subsection B). Further, the amendments spell out how the regulations within the TOD are to be applied:

[41] Plaintiffs describe the TOD similarly: "a zoning mechanism that expands allowable uses, with particular application to technology related businesses . . . within existing zoning districts . . . ." Compl., ¶ 12.

> (1) If a use or structure is only permitted by virtue of the TOD ordinance, then TOD standards apply.
>
> (2) If a use is permitted by-right in the underlying zoning and the user is receiving technology zone incentives pursuant to chapter 8, then the TOD standards apply.
>
> (3) If the data center use is permitted by-right in the underlying zoning for the property and the property is adjacent to residentially-zoned property or a mixed-use development with residential use, then TOD standards in Sec. 15-449.A apply.
>
> (4). However, any user following the TOD standards also must comply with the underlying zoning standards that are not addressed or superseded by the TOD standards.

Id.

71. Thus, an overlay district like the TOD sits on top of the underlying/existing zoning district, and the applicable regulations and standards are a combination of the two. To borrow Plaintiffs' words, this effectively creates a "new zoning district." Compl., ¶ 54. And "each class or kind of buildings and uses" is treated uniformly within these new overlaid zoning districts. Code § 15.2-2282.

72. But in making their Count II arguments, Plaintiffs refuse to recognize the (new) "districts" for purposes of § 15.2-2282, falsely claiming there is disparate treatment "throughout the district." Compl., ¶ 55.[42]

73. Plaintiffs' claims regarding the "TOD-West" overlay area have the same fatal flaw. *See* Compl., ¶ 57. Again, "each class or kind of buildings and uses" within the appropriate district—here, TOD-West overlaid on the underlying/existing zoning—is treated uniformly. *See also* Code § 15.2-2282 ("[R]egulations in one district may differ from those in other districts.").

[42] If Plaintiffs' argument was correct, then ***all*** overlay districts—a well-established "zoning mechanism" (*see* Compl., ¶ 12)—would be impermissible. But Plaintiffs cite to no court decision invalidating an overlay district on such grounds (and Defendants are aware of none).

Count III Fails to State a Claim

74. At its core, Count III fails for the same reason as Count II—Plaintiffs' refusal to recognize the appropriate "district" after the TOD.

75. Plaintiffs contend that the TOD's adoption violated the Zoning Ordinance, specifically § 15-4, which provides that "[o]nly those uses, structures, or features permitted in specific district regulations are allowed." Compl., ¶ 62. Relatedly, Plaintiffs argue that the TOD encompasses two agricultural districts (A-1 and A-2), and the new permissible TOD uses are incompatible with the agricultural districts' intent and restrictions as stated in the Zoning Ordinance. *See id*., ¶¶ 63-68.

76. Plaintiffs simply ignore that the TOD amendment changed the Zoning Ordinance, and thus changed the permissible uses/buildings in the applicable district—which is now the TOD overlaid on the underlying/existing zoning district(s). *See supra*, ¶¶ 20-24, 70-73. Therefore, any use or structure authorized by the TOD amendment within a "district" is, by definition, consistent with the Zoning Ordinance.[43]

Count IV Fails to State a Claim

77. In Count IV, Plaintiffs contend that a change to the TOD zoning amendment made after the Board's public hearing constituted an unlawful downzoning. *See* Compl., ¶¶ 69-75. This claim fails for multiple reasons.[44]

[43] As shown above, the TOD amendments also specify how the uses and standards for the TOD and the underlying district should be applied. *See supra*, ¶ 70.

[44] Separate from the alleged unlawful "downzoning," Plaintiffs' objection to the TOD's "last-minute amendment" (Compl., ¶¶ 70-71) is addressed *supra*, ¶¶ 63-66.

78. *First*, there is nothing *per se* unlawful about a "downzoning,"[45] and Plaintiffs provide no authority for this blanket claim. To the contrary, it is black-letter law that a property owner has "no vested property right in the continuation of the land's existing zoning status." *Town of Leesburg v. Long Lane Assocs. Ltd. P'Ship*, 284 Va 127, 135 (2012) (quotation omitted) (collecting cases).

79. *Second*, Plaintiffs claim that ***other*** landowners' ability to develop data centers "by-right" was curtailed. *See* Compl., ¶¶ 72-74. For Count IV then, the purported harm is diametrically opposed to Plaintiffs' overall theory of adverse impact, which is predicated on the TOD "permitting new uses by-right—including data centers." Compl., ¶ 26; *see also id*., ¶ 25. And it is wholly insufficient for Plaintiffs to allege that their Count IV harm is "that their elected officials failed to comply" with the law (Compl., ¶ 75), as that purported harm would apply equally to all citizens. *See Va. Beach Beautification Comm'n*, 231 Va. at 419.

80. For these reasons—and particular to Count IV—Plaintiffs lack standing to assert the purported rights of other landowners. *See supra*, ¶¶ 31-43; *Drewry*, 84 Va. App. at 492.

81. *Finally*, Plaintiffs failed to allege the elements of a "piecemeal downzoning" claim. *See* Compl., ¶ 72. A piecemeal downzoning is "a rezoning (1) that the local governing body initiates on its own motion, (2) that selectively addresses the landowner's single parcel, and (3) that 'reduces the permissible residential density below that recommended by a duly-adopted master plan.'" *Bd. of Supervisors of Culpeper Cnty. v. Greengael, LLC*, 271 Va. 266, 284 (2006) (citation omitted).

[45] Plaintiffs define "downzoning"—without citation—as "a zoning action by a locality that results in a reduction in a formerly permitted land use intensity or restricts the range of uses permitted on property." Compl., ¶ 74.

82. For the second "piecemeal zoning" element, Plaintiffs fail to even identify the parcels in question. Instead, Plaintiffs generically allege "a piecemeal downzoning of certain areas within the TOD," and that the Board "diminished the development rights of landowners in the affected areas." Compl., ¶ 72. These amorphous descriptions are insufficient.

83. Moreover, to satisfy the second element, "the landowner's single parcel" must be owned by the plaintiff(s) asserting the claim. *Greengael*, 271 Va. at 284. That is clear by the Supreme Court's use of the definite article, "the," when referring to the parcel's owner. Further, the Court explained that the "aggrieved landowner" must "make a prima facie case that the rezoning is piecemeal downzoning." *Id*. at 284; *see also id.* at 285 (holding that the plaintiff, Greengael, had sufficiently pled the first two elements, including that the local governing body had "selectively directed [the] amendment to ***Greengael's*** Property") (emphasis added). Here, Plaintiffs are not the "aggrieved landowner[s]" of any allegedly downzoned parcels; in fact, they do not even live within the TOD. *See* Compl., ¶¶ 1-4, 72-73.

84. As for the third element, the Complaint fails to include any allegations that the purported downzoning "reduce[d] the permissible residential density below that recommended by a duly-adopted master plan." *Greengael*, 271 Va. at 284; *see also Purcellville West, LLC v. Loudoun Cnty. Bd. of Supervisors*, 75 Va. Cir. 284, 285 (Loudoun Co. 2008) (dismissing claims because a "piecemeal downzoning is not *per se* unlawful," and the complaints' allegations "do not support claims of piecemeal downzoning" in light of the *Greengael* standard).

Count V Fails to State a Claim

85. In Count V, Plaintiffs claim that the Board (1) does not have authority to regulate generators under Dillon's Rule and (2) the regulation of generators is field-preempted by state law. Compl., ¶¶ 76-86. They do not allege that the TOD provisions relating to generators conflict with

any state law or regulation. Instead, Plaintiffs claim that "[g]enerator operations" are "matters comprehensively regulated at the state level," Compl., ¶ 79, in an "exclusive state framework." Compl., ¶ 80.

86. Plaintiffs' allegations fail as a matter of law. *Bragg Hill Corp. v. City of Fredericksburg*, 297 Va. 566, 578 (2019) ("Whether a municipality has the power to act is a question of law[.]"). The TOD amendments provide standards to mitigate noise and visual impacts from the uses "adjacent to either residentially-zoned property or mixed-use development with residential uses," including from generators in the TOD. Ex. C to Compl., § 15-449(A)(1). The Board has express statutory authority through the exercise of its zoning powers to mitigate ***noise and visual impacts*** from land uses; by contrast, the Commonwealth regulates ***air pollution*** from generators.

87. *First*, as a threshold matter, Plaintiffs lack standing to bring this claim and cannot assert the rights of others. They do not live within the TOD and the generator noise provisions do not impose any burden or obligation on them. Equally true, the generator noise provisions actually prevent harm to Plaintiffs and others from noise in the TOD. Therefore, Plaintiffs cannot identify any particularized harm to them that would be different from others as a result of these provisions. *See supra*, ¶¶ 31-43. Nor is there an express or implied private right of action to enforce the provisions of the Virginia Code or regulations concerning emergency generators. *See Cherrie v. Va. Health Servs.*, 292 Va. 309, 315 (2016) ("The existence of any viable right of action . . . must come from statutory law."). Consequently, Plaintiffs cannot assert the rights of property owners in the TOD regarding the noise provisions. *See infra* at 37, n.50.

88. *Second,* Plaintiffs' Dillon's Rule argument ignores the Board's broad zoning powers, which plainly authorize it to regulate noise and visual impacts from land use.

89. Governing bodies like the Board are expressly empowered to enact zoning ordinances "for the general purpose of promoting the health, safety or general welfare of the public" and for "facilitating the creation of a 'convenient, attractive and harmonious community.'" *Manors LLC v. Bd. of Supervisors*, 76 Va. App. 737, 747-78 (2023) *(*quoting Code § 15.2-2283); Code § 15.2-2200 (declaring the intent for governing bodies "to improve the public health, safety, convenience, and welfare of their citizens and to plan for the future development of communities."). This authority is a police power. *Board of Supervisors v. Rowe*, 216 Va. 128, 134 (1975).

90. Mitigating noise from land uses is a necessary and essential part of a legislative body's express authority to "improve the public health, safety, or welfare" under the enabling statutes. *E.g.*, *Manassas v. Rosson*, 224 Va. 12, 18, 19 (1982) (in the exercise of its statutory zoning authority, "a legislative body properly may consider the necessity of keeping residential areas free of disturbing noises").

91. Similarly, as part of its statutory authority to create "attractive" and "harmonious" communities, the Board has authority to mitigate visual and scenic impacts from uses in the TOD. *See, e.g.*, *Manors*, 76 Va. App. at 748 ("This means that under Code § 15.2-2283, creating convenient, attractive, and harmonious communities is a component of the public health, safety, and welfare.").

92. Therefore, as part of its broad zoning powers, the Board has express statutory authority to enact the noise and visual impact provisions in ZO § 15-449(A)(1), and has not exceeded its authority.

93. *Third,* Plaintiffs incorrectly assert that "[g]enerator operations" are "matters comprehensively regulated at the state level" through an "exclusive state framework" delegated to

the Virginia Department of Environmental Quality ("DEQ") and the State Air Pollution Control Board ("Pollution Board"). Compl., ¶¶ 78-80.

94. There is no field preemption because the General Assembly has not manifested an intent to preempt ordinances that mitigate noise and visual impacts relating to land uses concerning generators. *Virginia Beach v. Virginia Restaurant Ass'n,* 231 Va. 130, 133 (1986) ("[A] court will not hold that a legislative enactment preempts the entire field unless the court can find in the statute a manifest intent on the part of the legislature to preempt the field.").

95. The authority delegated to the Pollution Board is to regulate ***air pollution*** from generators, not to regulate their noise or visual impacts. Code § 10.1-1308(A). In furtherance of this objective, the Pollution Board is directed to adopt "regulations to reduce . . . the carbon dioxide emissions" from certain generators. Code § 10.1-1308(E). Pursuant to that statutory authority, the Pollution Board has adopted regulations requiring a general permit for emergency generators and establishing requirements for generator emissions, monitoring, reporting, and recordkeeping. 9VAC5-540-10, *et seq.* Neither the regulations nor the enabling statutes purport to delegate to the Pollution Board the exclusive authority to regulate noise or the visual impacts from emergency generators.[46]

96. By contrast, the TOD amendments do not regulate emergency generator emissions or air pollution. Nor do they require a permit for generator operation. It instead establishes standards to reduce noise and visual impacts from land uses related to generators.[47]

[46] Code §§ 10.1-1307.2 and 10.1-1308 are the enabling statutes for 9VAC5-540-10 *et seq. See, e.g.*, 9VAC5-540-10 (identifying the "statutory authority" for the regulations as Code §§ 10.1-1307.2 and 10.1-1308).

[47] The Board recognized that the DEQ and Pollution Board have authority to regulate generator emissions. November 6, 2025 Staff Presentation (GOOCHLAND_03152) (reflecting EPA and DEQ authority over air quality emissions from generators).

97. Plaintiffs point to no statute or statutory language that manifests an intent by the General Assembly to "preempt the field." *Virginia Rest. Ass'n,* 231 Va. at 133. To the contrary, the intent is just the opposite: "the existence of a permit under this chapter [540: Emergency Generator General Permit] . . . shall not relieve any owner of the responsibility to comply with any applicable regulations, law, ***ordinances***, and orders of the governmental entities having jurisdiction." 9VAC5-540-50(B) (emphasis added).

98. If the General Assembly had intended to preempt the Board's zoning authority in this way, it would have clearly and unequivocally said so.[48] *Virginia Rest. Ass'n,* 231 Va. at 134 ("[H]ad the legislature intended to preclude localities from imposing a sales tax upon the retail sale of liquor as a part of a meal, it would have said so."). Framing the issue as the Supreme Court did in *Virginia Restaurant Association*, the enabling statutes do not manifest ***any*** intent "that no other enactments may touch upon [generators] in any way." *Id.* at 135.

99. Plaintiffs cite no statute or regulation that prohibits the Board from establishing standards to mitigate noise and visual impacts from generators in a zoning ordinance. Indeed, neither the enabling statutes nor the regulations even mention the words "noise," "screening," or the like. *Id.* at 133 ("[W]e find it significant that Code § 4-96 nowhere mentions taxation.").

[48] The General Assembly knows how to manifest its intent to preempt a field. It does so by using express language stating that state law preempts ordinances. *See* Code § 6.2-2504 ("This Chapter shall preempt and be exclusive of all ordinances of any locality relating to refund anticipation loans."); Code § 10.1-1425 ("The provisions of this article shall supersede and preempt any local ordinance which attempts to regulate the size or type of any container or package containing food or beverage or which requires a deposit on a disposable container or package.").

Count VI Fails to State a Claim

100. In Count VI, Plaintiffs allege that the water and sewer connection provision of the TOD amendments—§ 15-449(A)(5)[49]—is void because (1) the General Assembly has not "authorized counties to regulate public water and wastewater systems through zoning ordinances" and (2) the provision conflicts with Code § § 15.2-2110 and 15.2-5137. Compl., ¶ 92. These claims fail for at least five reasons.

101. *First*, Plaintiffs do not have standing to challenge a connection requirement that does not apply to them. They do not live within the TOD and the connection requirement does not impose any burden or obligation on them. Most importantly, Plaintiffs can identify no particularized harm that would be different from others living outside the TOD. *See supra*, ¶¶ 31-43.

102. *Second,* Plaintiffs have no private right of action to enforce Code § 15.2-2110. Section 15.2-2110 contains no express private right of enforcement, and there is no "demonstrable evidence" of an implied right of action in the statutory text. *See Cherrie v. Va. Health Servs.*, 292 Va. 309, 315 (2016) ("The existence of any viable right of action . . . must come from statutory law.").[50]

103. *Third*, Plaintiffs' Dillon's Rule claim fails because Virginia counties are empowered to own and operate their own water and wastewater systems. The General Assembly

[49] Section 15-449(A)(5) provides: "Any use within the TOD must utilize public water and sewer systems; however, onsite reuse of water or onsite treatment of wastewater prior to discharge in to the public system is permitted." Ex. C to Compl.

[50] That Plaintiffs bring this action as a declaratory judgment does not create a right of action. *See, e.g.*, *Miller v. Highland Cnty.*, 274 Va. 355, 371-72 (2007) ("[T]he declaratory judgment statutes may not be used to attempt a third-party challenge to a governmental action when such a challenge is not otherwise authorized by statute."). Nor can Plaintiffs "evade that conclusion by a bare reference to the Dillon Rule." *Drewry*, 84 Va. App. at 492 (plaintiff had no right of action because "nothing in Code § 15.2-2204 allows him to assert the statutory notice rights of others").

has expressly authorized Goochland County to own and operate water and sewer systems and to offer such services for a fee. Code § 15.2-2109;[51] *see also* Code § 15.2-2111 (regulation of water and sewer systems);[52] Code § 15.2-2119 (fees and charges); *see* Code § 15.2-2283 (zoning authority includes promoting "the health, safety or general welfare of the public"). More specifically, Code § 15.2-2110(B) expressly authorizes Goochland County to require mandatory connection to its water and wastewater systems.

104. *Fourth*, Code § 15.2-5137 does not manifest any intent by the General Assembly to preempt the field of connections to such water and wastewater systems, or to reserve such authority just for public service authorities. *See Virginia Restaurant Ass'n,* 231 Va. at 133 (field preemption does not apply "unless the court can find in the statute a manifest intent on the part of the legislature to preempt the field"). Again, the County is ***expressly*** authorized to require mandatory connection to its water and wastewater systems. Code § 15.2-2110(B).

105. Section 15.2-5137 simply provides public service authorities with the power to require connection to such systems, and nothing in Code § 15.2-5137 states that the power is ***exclusive*** to public services authorities or that such power preempts local governments from requiring connection to its water and wastewater systems. *See supra*, ¶¶ 94, 97-98.

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[51] "Any locality may (i) acquire or otherwise obtain control of or (ii) establish, maintain, operate, extend and enlarge: waterworks, sewerage, gas works (natural or manufactured), electric plants, public mass transportation systems, stormwater management systems and other public utilities within or outside the limits of the locality . . . ." Code § 15.2-2109(A). "The locality may also prevent the pollution of water and injury to waterworks for which purpose its jurisdiction shall extend to five miles beyond the locality. It may make, erect and construct, within or near its boundaries, drains, sewers and public ducts and acquire within or outside the locality[.]" *Id.*

[52] "Such regulation may include the establishment of an exclusive service area for any sewage or water system, including a system owned or operated by the locality, the fixing of rates or charges for any sewage or water service, and the prohibition, restriction or regulation of competition between entities providing sewage or water service." Code § 15.2-2111.

106. *Fifth*, Plaintiffs are wrong in contending that ZO § 15-449(A)(5) conflicts with Code § 15.2-2110(B),[53] simply because the amendment does not contain the statutory "exemption" for "owners with existing, correctable, or replaceable private systems." Compl., ¶ 89.

107. "[W]here an ordinance and a statute are said to be in conflict, it is the duty of the courts to harmonize them, if reasonably possible, so that they can stand together," *Virginia Restaurant Ass'n*, 231 Va. at 132, and only a "direct, irreconcilable conflict" will nullify the provision of an ordinance. *Id.* at 133.

108. Code § 15.2-2110(B) authorizes the Board, as a ***public utility***, to require a mandatory connection to its water and sewer systems, but does not limit or circumscribe the Board's broad zoning authority. As discussed, the Board's express zoning powers are police powers that include the authority to create land use districts and regulate land use within those districts to protect and promote the public health, safety, and welfare of its citizens. *See* Code §§ 15.2-2280, 15.2-2283. To that point, Code § 15.2-2110(B) is located in Chapter 21 of Title 15.2, which does not concern the Board's land-use authority. Instead, Chapter 21 concerns a wholly different matter: "Franchises; Sale and Lease of Certain Municipal Public Property; Public Utilities."

109. Plainly, then, § 15-449(A)(5) is a land-use provision that only applies to a property owner who chooses ***not*** to develop his property in accordance with the underlying zoning district regulations, and instead elects to develop one of the high-technology uses that is only permitted

[53] Code § 15.2-2110(B) provides, in relevant part, that Goochland County:

> may require connection to their water and sewer systems by owners of property that can be served by the systems if the property, at the time of installation of such public system, or at a future time, does not have a then-existing, correctable, or replaceable domestic supply or source of potable water and a then-existing, correctable, or replaceable system for the disposal of sewage adequate to prevent the contraction or spread of infectious, contagious, and dangerous diseases.

under the TOD amendments. These sections impose development standards that must be satisfied to enjoy one of the zoning uses that is permitted only by the application of the TOD ordinance. A property owner who opts to develop property for a high technology use as permitted under the TOD amendments knowingly assumes an obligation to use the County's water and wastewater systems in exchange for the benefits associated with taking advantage of those additional permitted uses. But, for persons who do not wish to develop a TOD-based use, their opportunity to develop their property pursuant to its underlying zoning and not connect to the County's public utility system is unchanged by the adoption of the TOD amendments. Section 15-449(A)(5) merely conditions use of an overlay district's benefits with the responsibility to connect to the County's water and wastewater systems—something Code § 15.2-2110(B) does not prohibit in the exercise of the County's authority to regulate land uses in the TOD.

110. Even so, the so-called statutory "exemption" does not apply to the uses pursuant to the TOD—which will be large, industrial and technology uses that plainly will not have a "then-existing" "domestic"[54] supply of potable water or an adequate sewage system. Not surprisingly, the Complaint does not allege that any use authorized by the TOD amendments would have its own "then-existing" "domestic" water supply or sewer system. Additionally, § 15-449(A)(5) does not exclude private water and sewage systems, and it expressly permits "onsite reuse of water or onsite treatment of wastewater prior to discharge," permitting TOD property owners to rely on their own onsite systems to better reduce the burdens on the County's systems.

[54] The plain meaning of the adjective "domestic" means "of or relating to the home, the household, household affairs, or the family . . . devoted to home life or household affairs." www.dictionary.com/browse/domestic. Given the General Assembly's use of the word "domestic," Code § 15.2-2110(B) plainly relates to households or homes, not to the large, industrial uses in the TOD. *See* Ex. C to Compl., § 15-448 (the TOD is intended "to attract and advance high-tech industrial development.").

111. Therefore, the ordinance and statute can stand together, and Plaintiffs' Dillon's Rule and conflict preemption claims fail. *See Virginia Restaurant Ass'n*, 231 Va. at 133-135 (harmonizing a statute and ordinance by reading statutory language narrowly).

Count VII Fails to State a Claim

112. Plaintiffs allege that five discrete provisions of the TOD amendments contain unconstitutionally vague terms. Compl., ¶ 97. This claim fails as a matter of law for five reasons.

113. *First,* Plaintiffs do not have standing to bring a void-for-vagueness challenge to TOD provisions that do not apply to them. As they do not live or own property in the TOD, Plaintiffs cannot claim a deprivation of any liberty or property interest they have that is burdened by these provisions. *See Johnson v. United States*, 576 U.S. 591, 595 (2015) (as vagueness claims are brought under the due process clauses, they seek to vindicate liberty or property interests); *Colten v. Kentucky*, 407 U.S. 104, 110 (1972) (the purpose of the void-for-vagueness doctrine is to provide fair notice to those subject to the enforcement of a statute or ordinance).

114. Equally important, Plaintiffs do not identify any particularized harm to them caused by any alleged vagueness in these provisions that is different from that experienced by the general public. *See supra*, ¶¶ 31-43. Instead, they broadly assert that the alleged uncertainty in the TOD "den[ies] ***landowners*** due process of law." Compl., ¶ 98 (emphasis added).

115. *Second*, for similar reasons, Plaintiffs cannot successfully assert either a facial or as-applied constitutional challenge to the TOD provisions. They do not allege that the challenged provisions are unconstitutional as applied to them—because they don't apply to them at all—or that they are unconstitutional "in any context." *See Toghill v. Commonwealth*, 289 Va. 220, 228 (2015) (to raise a facial challenge, a plaintiff must show "first that the statute in question is

unconstitutional as applied to him and that the statute in question would not be constitutional in any context").

116. *Third*, even if Plaintiffs ***could*** bring such a claim, the TOD amendments are not a penal statute subject to a void-for-vagueness challenge. *E.g.*, *Moses v. Commonwealth,* 27 Va. App. 293, 302-303 (1998) ("[V]agueness analysis of the statute is inappropriate" because it is not a penal statute); *Smith v. Commonwealth,* 3 Va. App. 650, 656 (1987) (rejecting vagueness challenge to parts of wiretap statute that were not penal).

117. Zoning ordinances, including the TOD amendments, are regulatory, not penal: their principal purpose is for land use development and regulation, not punishment. *See* Code § 15.2-2283 ("Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing the objectives of § 15.2-2200."). And although a zoning ordinance violation may result in a civil penalty, the amendments do not subject *these* Plaintiffs to any penalty, and do not deprive them of *their* liberty or *their* property.

118. *Fourth*, Plaintiffs bear a heavy burden to prove that their cherry-picked provisions of the TOD amendments are unconstitutionally vague. *See Cnty. of Isle of Wight v. Int'l Paper Co.*, 301 Va. 486, 497 (2022) ("'It is a settled principle of law that all statutes and ordinances are presumed to be constitutional, and that if there is any doubt such doubt should be resolved in favor of their constitutionality.'") (citation omitted).

119. "Because legislative bodies are '[c]ondemned to the use of words,' courts cannot require 'mathematical certainty' in the drafting of legislation. For this reason, an ordinance that lacks meticulous specificity nevertheless may survive a vagueness challenge if the ordinance as a whole makes clear what is prohibited." *Tanner v. City of Va. Beach*, 277 Va. 432, 439 (2009) (citation omitted); *Manors*, 76 Va. App. at 749 (ordinances survive vagueness challenge when they

"'contain sufficient guidelines to enable the governing body of [the] County to exercise effectively its legislative function'").

120. Consequently, to defeat a vagueness challenge, "no more than a reasonable degree of certainty" is required. *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 340 (1952). And, "[i]f a statute can be made constitutionally definite by a reasonable construction, the court is under a duty to give it that construction." *Pedersen v. City of Richmond*, 219 Va. 1061, 1065 (1979).

121. It also is important that decisions made under the TOD amendments are not "shielded from judicial review." *Helmick v. Town of Warrenton*, 254 Va. 225, 233 (1997). As the Supreme Court has recognized, "'[t]he decisions [of local governing bodies] are always subject to the standard of reasonableness,'" and "'[i]f the governing body exercises its discretion in an arbitrary, capricious, or unreasonable manner, the aggrieved party has recourse through the courts.'" *Id.* (citations omitted).

122. *Fifth*, none of the five provisions that Plaintiffs isolate in the TOD amendments are unconstitutionally vague. Compl., ¶ 97. Each challenged provision includes sufficient standards and guidelines for the exercise of enforcement authority and uses commonly understood terms.

123. As to the first provision, the term "emergencies" in § 15-449.A(1)(d)(i) is not "undefined" as Plaintiffs allege. Compl., ¶ 97. Rather, the term is itself a definition. Ex. C to Compl. § 15-449.A(1)(d)(i) ("Emergencies means, for these purposes, when, ...").

124. Section 15-449.A(1)(d)(i) provides a clear and understandable definition of when there is an emergency: "when, due to circumstances beyond the facility operator's control, the principal energy source to the facility is temporarily unavailable; if the regulated energy provider directs temporary uses of generators for protection of energy grid; or at the direction of public emergency services."

125. Contrary to Plaintiffs' allegation, the phrases "beyond the facility operator's control" and "at the direction of public emergency services" are well-understood terms used in common parlance and in the Virginia Code, and require no further explication. *See, e.g.*, Code § 10.1-1411(B) ("beyond the control of a county"); Code § 15.2-931(B) ("beyond the control of operators or owners"); Code § 15.2-5120(4) ("beyond the control of the entity"); Code § 46.2-1573.33(C) ("beyond the control of the dealer"); Code § 15.2-900 (using term "public emergency services").

126. As to the second provision, the noise standards in § 15-449.A(1)(a)-(c) are not unconstitutionally vague because they provide definite and ascertainable standards for noise regulation.

127. The TOD amendments provide for maximum decibel levels of 55dBA and 65dBC for specified uses. Ex. C to Compl., § 15-449(A)(1)(a). And the required "environmental noise impact assessment, meeting acceptable industry standards," must specifically include "modeling in SoundPlan, CadnaA, or acceptable equivalent." *Id*., § 15-449(A)(1)(c).

128. The term "acceptable industry standards" is not vague. It is defined by the specific modeling tools identified in that provision. *Id.* And, most importantly, the identification of specific noise modeling tools provides objective criteria for determining "acceptable industry standards" and actually ***circumscribes*** and ***limits*** the discretion of enforcement officials.

129. As to the third provision, § 15-449.A(1)(d)(iii) also provides objective criteria for determining compliance with the noise impact standards from generators.

130. This section requires use of "low emission Tier 4 certified diesel generators" or "newer technologies and other methods . . . so long as they minimize noise impacts as well as or better than those listed here." Ex. C to Compl., § 15-449.A(1)(d)(iii). The phrase "newer

technologies and other methods" is modified and understood by the other terms around it. Specifically, the emission levels from a Tier 4 generator are a floor for determining whether "newer technologies and other methods" are acceptable because any "newer technologies and other methods" must "minimize noise impacts as well as" the Tier 4 model. *Id.*

131. Further, what technologies are "newer" than a Tier 4 generator is capable of being ascertained by reference to the noise levels of Tier 4 generators.

132. As to the fourth provision, Plaintiffs again challenge the water connection provision in § 15-449.A(5), this time saying that the alleged conflict with a state statute "creates confusion" and leaves "property owners uncertain of their obligations." Compl., ¶ 97. There is no conflict, so there is no confusion. *See supra*, ¶¶ 106-111. Nor do Plaintiffs identify any part of § 15-449.A(5) that is vague.

133. As to the fifth provision, Plaintiffs allege that the following setback provisions in § 15-449.A(6)(a) and (b) are unconstitutionally vague because they do not define "mechanical equipment" or specify "whether temporary/mobile generators are included": "a data center and all of its exterior mechanical equipment, including generators, cannot be located within [300 or] 500 feet of residentially-zoned property or a mixed-use development with residential uses." Compl., ¶ 97.

134. The term "mechanical equipment" is a commonly-used and well-understood term. *See, e.g.*, Code § 15.2-901 ("'clutter' includes mechanical equipment"); Code § 54.1-402(A)(7) ("mechanical equipment"). And "mechanical equipment" cannot be vague here because it expressly "includ[es] generators." Ex. C to Compl., § 15-449.A(6)(a), (b).

135. Plaintiffs need not speculate whether this provision applies to "temporary/mobile generators" because, as drafted, it contains no exclusions. *See Helmick*, 254 Va. at 232

("[L]egislation cannot address every variable which will arise in the application or administration of the delegated authority.").

136. The five challenged provisions of the TOD amendments therefore survive constitutional scrutiny as a matter of law.

Count VIII Fails to State a Claim

137. Plaintiffs' allegations in Count VIII—that the TOD amendments are unreasonable, arbitrary, and capricious—rest on two legal fallacies: (1) that the Board was required to make "findings" concerning the factors in Code §§ 15.2-2283 and -2284, and (2) that the Board was required to commission or conduct "studies" of infrastructure capacity or adequacy.

138. Because there is no requirement that the Board make "findings" or commission "studies"—and because the legislative record makes the reasonableness of the Board's legislative action fairly debatable—Count VIII should be dismissed as a matter of law.

139. *First*, it is settled law that Code §§ 15.2-2283 and 15.2-2284[55] do not require the Board to document its evaluation of the statutory factors or to make findings on the record about its consideration of those factors. *Hartley*, 80 Va. App. at 19 (a board is not required to consider the statutory factors "on the record"); *Gas City, LLC*, 2025 Va. App. LEXIS 713, at *10-11 ("There is no requirement for the Board to record its evaluation of each factor, and failure to consider

[55] Code §§ 15.2-2283 and 15.2-2284 "list myriad factors to which a locality 'shall . . . give reasonable consideration' when drafting zoning ordinances." *Hartley v. Bd. of Supervisors*, 80 Va. App. 1, 18 (2024) (citation omitted); *Gas City, LLC v. Rockingham Cnty. Bd. of Supervisors*, No. 0xxx-xx-3, 2025 Va. App. LEXIS 713, at *10 (Nov. 18, 2025) ("Code §§ 15.2-2283 and 15.2-2284 set forth the purpose of zoning ordinances and the factors the Board must consider in amending zoning districts.").

statutory factors on the record does not render a legislative decision arbitrary and capricious as a matter of law.").[56]

140. Rather, a board is presumed to be "'cognizant at the time it acted of all existing facts and circumstances bearing upon'" the issue "such that [the appellate court] may consider evidence of reasonableness . . . even if it was not before the Board in the legislative record." *Hartley*, 80 Va. App. at 19 (citation omitted).

141. *Second*, nothing in Code §§ 15.2-2283 or 15.2-2284 required the Board to commission or conduct studies when considering the TOD and Comprehensive Plan amendments. Instead, those statutes are silent about studies.

142. The absence of such a requirement means that the General Assembly did not intend to include it. *See Wal-Mart Stores East, LP v. State Corp. Comm'n*, 299 Va. 57, 70 (2020) ("[W]e continue to 'presume that the legislature chose, with care, the specific words of the statute' and that '[t]he act of choosing carefully some words necessarily implies others are omitted with equal care.'") (citations and quotations omitted).

143. To hold otherwise would require this Court to rewrite the unambiguous text of these statutes to impose a requirement that the General Assembly did not see fit to include; that, of course, is impermissible. *E.g.*, *Logan v. City Council*, 275 Va. 483, 492 (2008) ("We may not add words to a statute or ignore any of the actual statutory language.").

144. *Third*, for similar reasons, the plain text of Code § 15.2-2230.1 defeats Plaintiffs' allegation that the Planning Commission "did not conduct the public facilities study required by Va. Code § 15.2-2230.1." Compl., ¶ 107.

[56] Similarly, there is no statutory requirement that the Board cite these statutory provisions in the "Whereas" provisions of the ordinance, as Plaintiffs incorrectly assert. Compl., ¶ 104.

145. Contrary to Plaintiffs' allegation, Code § 15.2-2230.1 permits, but does not require, a planning commission to study public facilities; it states: "In addition to reviewing the comprehensive plan the planning commission ***may*** make a study of the public facilities, including existing facilities, which would be needed if the comprehensive plan is fully implemented." (emphasis added). Because the word "may" is permissive, *Wal-Mart Stores East, LP*, 299 Va. at 70-71, Code § 15.2-2230.1 does not mandate a public facilities study.[57]

146. *Fourth*, stripped of its baseless statutory claims, what remains of Count VIII is examined under the fairly-debatable standard, which involves limited judicial review. *Hartley*, 80 Va. App. at 15.

147. Analysis under the fairly-debatable standard begins with the presumption that zoning amendments "are presumed to be valid, and unless they are invalid on their face, a heavy burden of proof rests upon those who would set such ordinances aside." *National Maritime Union v. Norfolk*, 202 Va. 672, 680 (1961); *Turner v. Bd. of Supervisors*, 263 Va. 283, 288 (2002) ("The burden of proof is on him who assails it to prove that it is clearly unreasonable, arbitrary or capricious, and that it bears no reasonable or substantial relation to the public health, safety, morals, or general welfare.").

148. Reasonableness under the fairly-debatable standard is judged under a burden-shifting framework. *Hartley*, 80 Va. App. at 18. If a plaintiff presents probative evidence of unreasonableness sufficient to rebut the presumption, the locality must present "some evidence"

[57] The words "may" and "shall" both appear in Code § 15.2-2230.1, manifesting the obvious: the General Assembly knows how to distinguish mandatory and optional provisions of a statute and, by using both "may" and "shall," it distinguished them here. *See Wal-Mart Stores East, LP*, 299 Va. at 71 ("'When the General Assembly employs a specific word [shall] in one section of a statute, and chooses a different term [may] in another section of the statute, we must presume the difference in language was intentional.'") (alteration in original) (citation omitted).

of reasonableness. *Id.* at 15. If the locality does so, the legislative action "'must be sustained.'" *Id.* (citations omitted).

149. Giving deference to legislative acts, "[a]n issue is fairly debatable 'when the evidence offered in support of the opposing views would lead objective and reasonable persons to reach different conclusions.'" *Town of Leesburg v. Giordano*, 280 Va. 597, 606 (2010) (citation omitted); *National Maritime Union,* 202 Va. at 608 (the decision "'must be sustained'" if "'there is ***any evidence in the record sufficiently probative*** to make a fairly debatable issue of the Board's decision.'") (emphasis in original) (citations omitted).

150. And more to the point, judicial review of the Board's consideration of the statutory factors asks "only whether the Board's decision was fairly debatable ***in the context of*** the required statutory factors." *Hartley*, 80 Va. at 19 (emphasis added); *Bd. of Supervs. v. Miller & Smith, Inc.*, 242 Va. 382, 384 (1991) ("[T]he weighing of the relevant factors is a legislative function reserved to" the Board).

151. Viewed under this legal framework,[58] Plaintiffs have not rebutted the presumption of reasonableness. And, even if they have, the substantial legislative record contains compelling evidence of reasonableness to make the issue fairly debatable.

152. Plaintiffs allege that the Board did not consider the statutory factors, specifically identifying "infrastructure adequacy, public facility impacts, Comprehensive Plan consistency,"

[58] Plaintiffs allege that the Board "failed to demonstrate a rational basis for adopting the TOD." Compl., ¶ 105. "Fairly debatable," not "rational basis," is the appropriate standard for evaluating the Board's legislative action.

and environmental impacts. Compl., ¶¶ 105, 108.[59] The legislative record flatly contradicts these allegations.

153. As the legislative record reflects, when considering the location and proposed uses in the TOD, the County Staff and Board considered the Comprehensive Plan, existing uses in the TOD (including by-right uses), the ability to opt-out of the TOD, the scale and location of TOD uses, development standards (such as height, setbacks, and buffers), noise, roads and traffic, schools, parks and recreation, fire and rescue services, the County's rural setting, quality of life, public utilities (including water/sewer), energy use and impacts, potential revenue from TOD uses, paying down the TCSD debt,[60] environmental impacts (including pollution), property taxes, property values, wildlife, health, and safety.

154. County Staff and the Board considered these issues over many months, addressed them in public hearings and meetings, and heard hundreds of comments from citizens on these very issues.

155. In response to citizen feedback, the initial TOD proposal was revised to address concerns and input on these very issues, including (for example) expanding buffer zones, lowering maximum building heights, and imposing tougher noise restrictions.[61] *Wilson Family, LLC v. Bd.*

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[59] In Count VIII, Plaintiffs renew their allegations about the effect of the TOD on underlying districts (Compl., ¶ 102), and the water and sewer connection provision (Compl., ¶ 106), which have already been addressed *supra* in response to, as applicable, Counts I-III, and VI.

[60] The TCSD was created in 2002 to extend the County's water and sewer systems to the area now encompassed by the TOD. Comprehensive Plan 2035 ("Public water and sewer is located generally in the eastern end of the County in the Tuckahoe Creek Service District and in the Courthouse Village.") (GOOCHLAND_05453); *id*. ("Capital investment in the [TCSD] area is needed to offset the costs of the bonds issued to build the sewer and water infrastructure.") (GOOCHLAND_05437). The County projected that anticipated commercial-tax revenue from the TOD would provide substantial assistance in paying off the TCSD debt, thereby reducing residents' taxes. *See* November 6, 2025 Staff Presentation (GOOCHLAND_03108).

[61] November 6, 2025 Staff Presentation (GOOCHLAND_03115, 03121-03126).

of Supervisors of Hanover Cnty., 2025 Va. App. LEXIS 188, at *7 (April 1, 2025) (noting, in considering a challenge under the fairly-debatable standard, that "resident concerns are 'certainly relevant,' and the Board would have 'thwart[ed] democracy' if it had disregarded them") (citations omitted).

156. Contrary to Plaintiffs' claim, the legislative record confirms that the Board considered the capacity and adequacy of its infrastructure and utility systems to manage the uses in the TOD. As mandated by the State, Goochland, along with other localities in the region, had completed a Water Supply Plan that evaluated existing and future water supply needs, which "indicated that there would be adequate water supply through the time horizon of this Plan."[62] County Staff therefore concluded – and informed the Board – that it had excess water capacity[63] which is not surprising as the County borders the James River, which is "the largest watershed in Virginia" and "the longest river" in the country, and the County has contracts in place for its water needs.[64] The record also reflects that the Eastern Goochland service area where the TOD is located has adequate wastewater treatment capacity through 2045.[65] Further, the TOD is located near major highways (I-64 and I-288) and public utilities (including water and sewer).[66] This was intentional and part of the decades-long plan to ready Eastern Goochland for these large-scale commercial uses. *See supra*, ¶¶ 14-16. Indeed, the TOD amendment itself provides that TOD uses

[62] Comprehensive Plan 2035 (GOOCHLAND_05484).

[63] November 6, 2025 Staff Presentation (GOOCHLAND_03109).

[64] Comprehensive Plan 2035 (GOOCHLAND_05481).

[65] **Ex.** 1 at 6, *Goochland's Long-Range Planning Documents*, Item No. 3 (Utilities Master Plan – August 2020) ("[C]apacity is adequate to meet the County's needs through the end of the planning period in 2045.") (GOOCHLAND_05762).

[66] Comprehensive Plan 2035 ("Public water and sewer is located generally in the eastern end of the County in the Tuckahoe Creek Service District and in the Courthouse Village.") (GOOCHLAND_05453).

were "closely located to benefit from the concentration of energy and infrastructure uses." Ex. C to Compl., § 15-448.

157. In considering these public utility and infrastructure issues, the County Staff and Board were also aware of the following master plans, which studied and analyzed the existing and future needs of the community, the capacity of current utility systems and infrastructure, and recommendations for future improvements to enable the County to meet future anticipated needs: a Utilities Master Plan;[67] a Major Thoroughfare Plan;[68] and a Fire-Rescue Master Plan.[69]

158. Further, the County had already concluded that it has existing capacity in the public school system,[70] and ample broadband access in Eastern Goochland.[71]

159. Additionally, it is beyond reasonable dispute that the Comprehensive Plan was at the forefront of the Board's consideration of these amendments and, in fact, ***was the motivation*** for the amendments. Moreover, the amendments advance important goals of the Comprehensive Plan to promote growth in Eastern Goochland and diversify and balance the tax base. In aligning its legislative action with the Comprehensive Plan, the Board was simply carrying out a policy that was decades in the making.

160. Finally, the Board plainly considered environmental impacts. It adopted various standards to reduce noise, protect nearby communities from industrial development, and provide

[67] Utilities Master Plan (GOOCHLAND_05750) (analyzing the period from 2020-2045).

[68] **Ex.** 1 at 6, *Goochland's Long-Range Planning Documents*, Item No. 2 (2040 Major Thoroughfare Plan) (GOOCHLAND_05660),

[69] **Ex.** 1 at 6, *Goochland's Long-Range Planning Documents*, Item No. 4 (Fire-Rescue Master Plan – January 2024) (GOOCHLAND_05881).

[70] Comprehensive Plan 2035 (GOOCHLAND_05468) (ample broadband access in Eastern Goochland); *id.* (GOOCHLAND_05473) (noting eastern portions of the county have available broadband).

[71] *Id.* (GOOCHLAND_05473) (noting eastern portions of the county have available broadband).

landscaping requirements to promote and preserve tree canopy. And the County had developed its Parks & Recreation Master Plan, to preserve the amenities of parks and recreation and promote conservation.[72]

161. Against this legislative record, it is plain that the Board considered the statutory factors. Consequently, Plaintiffs' claim that the Board acted arbitrarily or capriciously cannot stand. Plaintiffs failed to overcome the presumption that the Board acted reasonably and, even if it did, there is more than ample evidence demonstrating that the Board's legislative action is fairly debatable.

Count IX Fails to State a Claim

162. If any of the provisions of the TOD amendments are held invalid, Plaintiffs seek a declaration that those provisions are not severable, and therefore "the entire TOD must be struck and declared void in its entirety." Compl., ¶ 116.

163. The issue of severability is not a cause of action or claim; it is instead a remedy a court considers ***after*** it declares a statutory provision void or invalid. *Bd. of Supervisors v. Rowe*, 216 Va. 128, 147-48 (1975). Indeed, Plaintiffs must first prevail before the issue of severability is ripe. Thus, Count IX fails because Count I-VIII fail to state any claim.

[72] **Ex.** 1 at 6, *Goochland's Long-Range Planning Documents*, Item No. 5 (Parks & Recreation Master Plan – 2020-2023 Amended) (GOOCHLAND_06093).

164. If this Court concludes that a provision of the TOD amendments is void or invalid, however, then Plaintiffs should be put to their burden of overcoming the presumption of severability.[73] Until then, the issue is purely hypothetical and, therefore, premature.

The County and Planning Commission are Not Proper Parties

165. Finally, the County and Planning Commission demur to the Complaint because it does not state any cause of action against them.

166. As Plaintiffs allege, the Board "is the elected ***governing body*** responsible for adopting county ordinances, comprehensive plan amendments, and zoning map amendments." Compl., ¶ 6 (emphasis added).

167. Section 15.2-2285(F) provides that "[e]very action contesting a ***decision of the local governing body*** adopting or failing to adopt a proposed zoning ordinance or amendment thereto . . . shall be filed within thirty days of the decision with the circuit court having jurisdiction of the land affected by the decision." Code § 15.2-2285(F) (emphasis added).

168. The Supreme Court of Virginia has held that "[t]he complete absence of any language in Code § 15.2-2285(F) referring to a 'locality' indicates a legislative intent that only the 'governing body,' the entity that rendered the contested decision, be a required party defendant in an action challenging that decision." *Miller v. Highland Cnty.*, 274 Va. 355, 365-66 (2007).

169. Because § 15.2-2285(F) does not authorize any other entity to be a "party defendant" in a zoning amendment challenge, the County and the Planning Commission are not

[73] As Plaintiffs acknowledge, but do not discuss, the Zoning Ordinance has a broad severability provision, § 15-6. Compl., ¶ 114. "Where a severability provision is included, a legislative act is presumed to be severable, the burden of proving non-severability is on the assailant of the legislation, and the presumption of severability must be overcome by considerations which establish the clear probability that the legislature would not have been satisfied with what remains after elimination of the invalid parts." *Rowe*, 216 Va. at 147.

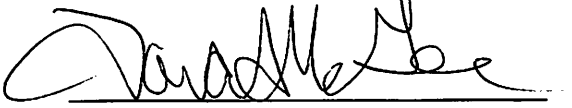
proper parties in this case and must be dismissed. *See, e.g.*, *Cacheris v. City Council of Alexandria*, 103 Va. Cir. 30, 35 (Alexandria 2019) (sustaining the demurrers by the City of Alexandria and the Alexandria City Planning Commission pursuant to § 15.2-2285(F)); *Dawson v. Loudoun Cnty. Bd. of Supervisors*, 59 Va. Cir. 517, 519 (Loudoun Co. 2001) (sustaining the County of Loudoun's demurrer based on § 15.2-2285(F)).

CONCLUSION

WHEREFORE, for the reasons above and as may be stated in any brief(s) filed in support and any argument made at a hearing, Defendants (i) Board of Supervisors of Goochland County, Virginia; (ii) Planning Commission of Goochland County, Virginia ; and (iii) Goochland County, Virginia respectfully request that the Court sustain their Demurrers, dismiss all claims alleged against them with prejudice, and award them such other relief as the Court deems just and proper.

Respectfully submitted,

BOARD OF SUPERVISORS OF GOOCHLAND COUNTY, VIRGINIA
PLANNING COMMISSION OF GOOCHLAND COUNTY, VIRGINIA
GOOCHLAND COUNTY, VIRGINIA



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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2026, a true and correct copy of the foregoing was emailed[74] and sent by First Class Mail, postage prepaid, to the following:

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[74] Due to the size of the legislative record, a Sharefile link will be made available to Plaintiffs' counsel for electronic download.

EXHIBIT 1

LEGISLATIVE RECORD INDEX

Haas v. Board of Supervisors of Goochland County

Planning Commission & Board of Supervisors Public Meetings

August 24, 2024 Joint Board of Supervisors & Economic Development Authority Meeting

1. Joint Meeting Agenda (GOOCHLAND_00001)
2. Joint Meeting Presentation (GOOCHLAND_00004)
3. Board of Supervisors Joint Meeting Minutes (GOOCHLAND_00104)
4. Livestream Transcript (GOOCHLAND_00112)
5. Video (GOOCHLAND_00197)

July 1, 2025 Board of Supervisors Meeting

1. Adopted Resolution #6394 Referring Technology Overlay District Ordinance to Planning Commission (GOOCHLAND_00198)
2. Adopted Resolution # 6393 Setting a Public Hearing on Technology Zone Ordinance (GOOCHLAND_00212)
3. Approved Minutes (GOOCHLAND_00217)

August 21, 2025 Planning Commission Public Meeting

1. Public Notice August 6, 2025 & Advertising Affidavit (GOOCHLAND_00237)
2. Public Notice Revised for Deferral on August 13, 2025 & Advertising Affidavit (GOOCHLAND_00239)
3. Notice to Henrico County – August 8, 11, & 15, 2025 (GOOCHLAND_00241)
4. Meeting Agenda Materials (GOOCHLAND_00249)
5. Speaker Sign in Sheets (GOOCHLAND_00269)
6. Staff Presentation (GOOCHLAND_00293)
7. Adopted Resolution 6426 to Defer Public Hearing to September 18, 2025 (GOOCHLAND_00332)
8. Approved Minutes (GOOCHLAND_00348)

September 18, 2025 Planning Commission Public Hearing

1. Public Notice on September 3 & 10, 2025 & Advertising Affidavit (GOOCHLAND_00353)
2. Public Notice Revised for Change to Time & Location on September 12 & 17, 2025 & Advertising Affidavit (GOOCHLAND_00355)
3. Property Owner Written Notice – September 4, 2025 (GOOCHLAND_00359)

4. Spreadsheets of Affected Property Owners' addresses for Written Notice (GOOCHLAND_00363)
5. Spreadsheets of Adjoining Property Owners' addresses for Written Notice (GOOCHLAND_00371)
6. Affidavits for Property Owner Written Notice – September 4, 2025 (GOOCHLAND_00444)
7. Property Owner Written Notice with Change to Time & Location (GOOCHLAND_00446)
8. Citizen Communications to PC through September 25, 2025 (GOOCHLLAND_00448)
9. Meeting Agenda Materials (GOOCHLAND_01841)
10. Speaker Sign in Sheet (GOOCHLAND_01866)
11. Staff Presentation (GOOCHLAND_01873)
12. Livestream Transcript (GOOCHLAND_02098)
13. Photos (GOOCHLAND_02166)
14. Video (GOOCHLAND_02170)

Continuation of Planning Commission Public Hearing on September 25, 2025

1. Speaker Sign in Sheets (GOOCHLAND_02171)
2. Adopted Resolution #6426 Recommending Approval of Technology Overlay District Ordinance (GOOCHLAND_02185)
3. Approved Minutes for September 18 & September 25 Public Hearing (GOOCHLAND_02201)
4. Livestream Transcript (GOOCHLAND_02216)
5. Photos (GOOCHLAND_02246)
6. Video (GOOCHLAND_02247)

October 7, 2025 Board of Supervisors Meeting

1. Approved Minutes (GOOCHLAND_02248)

November 6, 2025 Board of Supervisors Public Hearing

1. Public Notice on October 22 & 29, 2025 & Advertising Affidavit (GOOCHLAND_02264)
2. Property Owner Written Notice – October 23, 2025 (GOOCHLAND_02266)
3. Spreadsheet of Affected Property Owners' addresses for Written Notice (GOOCHLAND_02268)
4. Spreadsheet of Adjacent Property Owners' addresses for Written Notice (GOOCHLAND_02276)

5. Affidavits for Property Owner Written Notice – November 21, 2025 (GOOCHLAND_02359)
6. Affidavit for Public Advertisement of BOS meeting agenda – November 5, 2025 (GOOCHLAND_02361)
7. Citizen Communications to BOS (GOOCHLAND_02363)
8. Meeting Agenda Materials (GOOCHLAND_03077)
9. Speaker Sign in Sheets (GOOCHLAND_03081)
10. Staff Presentation (GOOCHLAND_03092)
11. Citizens' Presentations (GOOCHLAND_03234)
    a. Video (GOOCHLAND_03256)
12. Approved Ordinance # 6453 Adopting Technology Zone ordinance (GOOCHLAND_03283)
13. Approved Ordinance # 6471 Adopting Technology Overlay District Ordinance and Comprehensive Plan Amendment (GOOCHLAND_03288)
14. Approved Meeting Minutes[1] (GOOCHLAND_03307)
15. Livestream Transcript (GOOCHLAND_03354)
16. Photos (GOOCHLAND_03467)
17. Video (GOOCHLAND_03470)

Community Meetings

<u>July 7, 2025 Community Meeting</u>

1. Adjacent Property Owners Written Notice – June 16, 2025 (GOOCHLAND_03471)
2. Affected Property Owners Written Notice – June 16, 2025 (GOOCHLAND_03473)
3. Spreadsheet of Adjacent Property Owners' addresses for Written Notice (GOOCHLAND_03475)
4. Spreadsheet of Affected Property Owners' addresses for Written Notice (GOOCHLAND_03484)
5. Speaker Sign in Sheets (GOOCHLAND_03492)
6. Staff Presentation (GOOCHLAND_03495)

<u>September 8, 2025 Community Meeting</u>

1. Adjacent Property Owners Written Notice – August 25, 2025 (GOOCHLAND_03527)
2. Affected Property Owners Written Notice – August 25, 2025 (GOOCHLAND_03529)
3. Spreadsheet of Adjacent Property Owners' addresses for Written Notice (GOOCHLAND_03531)

[1] Link includes all citizen communications provided in #7 above.

4. Spreadsheet of Affected Property Owners' addresses for Written Notice (GOOCHLAND_03540)
5. Speaker Sign in Sheets (GOOCHLAND_03614)
6. Participant Comment Cards (GOOCHLAND_03634)
7. Staff Presentation (GOOCHLAND_03834)
8. Photos (GOOCHLAND_03914)
9. Livestream Transcript (GOOCHLAND_03952)
10. Video (GOOCHLAND_03990)

Town Halls

1. District 5 Town Hall – September 22, 2025 (GOOCHLAND_03991)
    a. Written Notice (GOOCHLAND_03991)
    b. Staff Presentation (GOOCHLAND_03993)
    c. Livestream Transcript (GOOCHLAND_04043)
    d. Video (GOOCHLAND_04090)
2. Countywide Town Hall – October 6, 2025 (GOOCHLAND_04091)
    a. Advertisement on September 3, 10, 17 & 24, 2025 & Affidavit (GOOCHLAND_04091)
    b. Citizen Sign In Sheets (GOOCHLAND_04093)
    c. Staff Presentation (GOOCHLAND_04109)
    d. Livestream Transcript (GOOCHLAND_04198)
    e. Video (Full & Edited Versions) (GOOCHLAND_04245 & GOOCHLAND_04246)

Additional Citizen Meetings

1. Small Group Citizen Meeting – August 4, 2025 (GOOCHLAND_04247)
2. Readers Branch Meeting – August 18, 2025 (GOOCHLAND_04248)
3. Mosaic Meeting – August 19, 2025 (GOOCHLAND_04249)
4. Small Group Citizen Meeting – September 2, 2025 (GOOCHLAND_04250)
5. Pixie Hamilton Meeting – September 17, 2025 (GOOCHLAND_04251)
6. Small Group Citizen Meeting – October 20, 2025 (GOOCHLAND_04252)

Additional Information for Citizens: Website and Additional Media

1. Website for Technology Overlay District & Technology Zone Ordinances (GOOCHLAND_04254)
    a. Website Updates (GOOCHLAND_04254)
    b. Citizen Requested Documents (GOOCHLAND_04549)
    c. Summary of Citizen Comments (GOOCHLAND_04661)
    d. Opt Out Form (GOOCHLAND_04766)

2. E-Newsletters “Goochland at a Glance” (GOOCHLAND_04770)
    a. August 29, 2025 (GOOCHLAND_04770)
    b. September 5, 2025 (GOOCHLAND_04773)
    c. September 26, 2025 (GOOCHLAND_04778)
    d. October 24, 2025 (GOOCHLAND_04781)
    e. November 7, 2025 (GOOCHLAND_04784)
3. Social Media Posts (GOOCHLAND_04787)
4. Mass emails to residents (GOOCHLAND_04838)
    a. September 17, 2025 re: change in location for September 18 Planning Commission public hearing (GOOCHLAND_04838)
    b. October 21, 2025 re: summary of proposed revisions to ordinance (GOOCHLAND_04840)
    c. October 23, 2025 re: revised location & time for November 6 public hearing (GOOCHLAND_04844)

Economic Development Authority Meetings

June 18, 2024 Economic Development Authority Meeting (GOOCHLAND_04848)

1. Approved Meeting Minutes (GOOCHLAND_04848)
2. Livestream Transcript (GOOCHLAND_04862)
3. Video (GOOCHLAND_04896)

July 9, 2025 Economic Development Authority Meeting (GOOCHLAND_04897)

1. Approved Meeting Minutes with Staff Presentation (GOOCHLAND_04897)
2. Livestream Transcript (GOOCHLAND_04934)
3. Video (GOOCHLAND_04971)

September 10, 2025 Economic Development Authority Meeting (GOOCHLAND_04972)

1. Staff Presentation (GOOCHLAND_04972)
2. Approved Meeting Minutes (GOOCHLAND_05052)
3. Livestream Transcript (GOOCHLAND_05056)
4. Video (GOOCHLAND_05091)

October 15, 2025 Economic Development Authority Meeting (GOOCHLAND_05092)

1. Staff Presentation (GOOCHLAND_05092)
2. Approved Meeting Minutes (GOOCHLAND_05317)
3. Livestream Transcript (GOOCHLAND_05327)
4. Video (GOOCHLAND_05356)

November 19, 2025 Economic Development Authority Meeting (GOOCHLAND_05357)

1. Draft Meeting Minutes (GOOCHLAND_05357)
2. Livestream Transcript (GOOCHLAND_05364)
3. Video (GOOCHLAND_05403)

Goochland's Long-Range Planning Documents

1. Comprehensive Plan 2035 (GOOCHLAND_05404)
2. 2040 Major Thoroughfare Plan (GOOCHLAND_05660)
3. Utilities Master Plan – August 2020 (GOOCHLAND_05750)
4. Fire-Rescue Master Plan – January 2024 (GOOCHLAND_05881)
5. Parks & Recreation Master Plan – 2020-2023 Amended (GOOCHLAND_06093)

Studies, Data & Other Analysis

1. Briefings of Board of Supervisors members (GOOCHLAND_06195)
2. Talking Points to Board of Supervisors (GOOCHLAND_06392)
3. TOD documents provided at Board of Supervisors' request (GOOCHLAND_06415)
4. Balloon Test – September 3, 2025 (GOOCHLAND_06419)
5. Benchmarking (GOOCHLAND_06452)
6. Dominion Energy Information and Meetings – August through October 2025 (GOOCHLAND_07928)
7. PolySonics Sound Engineer (GOOCHLAND_07940)
8. Staff's Renderings of Buildings & Buffers (GOOCHLAND_08128)
9. Staff's Potential Economic Development Revenue Calculations (GOOCHLAND_08135)
10. Virginia Nuclear Consortium Meetings – September 2025 (GOOCHLAND_08144)
11. Analysis Maps & Energy Generation Parcels (GOOCHLAND_08152)
12. SIR Marketing Consultants – September through October 2025 (GOOCHLAND_08176)
13. State Agency & Information Articles on Data Centers, Generators, etc. (GOOCHLAND_08410)
14. West Creek Proffers (GOOCHLAND_08453)
15. Other information (GOOCHLAND_08583)

EXHIBIT 2