

**IN THE CIRCUIT COURT OF
JEFFERSON COUNTY WEST VIRGINIA**

**FAIRFAX CROSSING REAL ESTATE)
117 W. Patrick St.)
Suite 200)
Frederick, Maryland 21701)**

Petitioner,)

v.)

**THE CITY OF RANSON PLANNING)
COMMISSION, and its Members,)
Antoinette RINGGOLD, Lizz KLEIN,)
Andy COLANDREA, Jaden BOUND,)
and Mike FAGAN in their official)
capacity,)
Ranson City Hall)
312 S. Mildred St.)
Ranson, WV 25438)**

Respondents.)

SERVE ALSO)

**CITY OF RANSON)
Attn: Timothy Stranko)
Ranson City Hall)
312 S. Mildred St.)
Ranson, WV 25438)**

**CITY OF RANSON PLANNING)
COMMISSION)
c/o Zach Holland)
Ranson City Hall)
312 S. Mildred St.)
Ranson, WV 25438)**

Case No. _____

Judge _____

**COMPLAINT AND VERIFIED
PETITION FOR WRIT OF
PROHIBITION, MANDAMUS
AND CERTIORARI**

COMPLAINT AND VERIFIED PETITION FOR REVIEW

Petitioner Fairfax Crossing Real Estate, LLC (“Petitioner” or “Fairfax”) files this Complaint and Verified Petition for Writ of Prohibition, Mandamus, and Certiorari against the Respondent City of Ranson Planning Commission and its members (the “Planning Commission”). In support of its Petition, Petitioner states the following:

NATURE OF THE CASE

1. Fairfax is the owner of real property in Ranson known as Lakeland Place at Fairfax Crossing (the “Project”). Fairfax has been actively developing the Project since acquiring it in 2018. It has spent substantial time, effort, hundreds of thousands of dollars on professionals and development related services in furtherance of the development of the Project. It has dedicated roads and deeded land to the City of Ranson, West Virginia (the “City” or “Ranson”) as part of its Development Agreement (“DA”) with the City as well as land to the City of Charles Town (for sewer service) as part of an Alternative Mainline Extension Agreement, in reliance on the City allowing it continued progression for the entitlements. It has also paid almost three quarters of a million dollars to the City in order to build streets (at least \$743,000, to be precise) and committed several hundred thousand dollars for construction of a CTUB pump station.

2. On May 11, 2026, the Commission declared that the approved Land Development Plan and Plat (“LDP&P) for the Project had expired. The Commission did so without prior notice to Fairfax (or the public) that it was contemplating doing so and in such a manner that Fairfax had no opportunity to be heard on the issue. *See Exhibit 1* (May 11, 2026 Meeting Packet) at page 44.¹

¹ There is a gap in the page numbers on **Exhibit 1** because Petitioner excerpted only the materials that are relevant to this matter.

3. As a matter of due process and by law, Petitioner was entitled to written notice of the decision and reasons therefor. W.Va. Code §8A-13-2(4).

4. Following the Commission's May 11, 2026 meeting, Fairfax requested written statement of the decision and reasons therefore. As of the date of this filing, Respondents have not provided one.²

PARTIES

5. Petitioner Fairfax Crossing Real Estate, LLC is a West Virginia limited liability company. It maintains its principal place of business at 117 W. Patrick St., Suite 200, Frederick, Maryland 21701. Fairfax is the owner of real property in Ranson known as Lakeland Place at Fairfax Crossing (the "Project"). Fairfax has been actively developing the Project since acquiring it in March of 2018.

6. Respondent City of Ranson Planning Commission (the "Commission") is an administrative agency of the City of Ranson, West Virginia.

7. Respondent Antoinette Ringgold is a member of the Commission

8. Respondent Lizz Klein is a member of the Commission.

9. Respondent Andy Colandrea is a member of the Commission.

10. Respondent Jaden Bound is a member of the Commission.

11. Respondent Mike Fagan is a member of the Commission.

12. Each of the above identified members of the Commission is named herein in their official capacity.

JURISDICTION AND VENUE

²After multiple requests, at 4:12 p.m. yesterday, the City Attorney sent a written letter confirming the denial. It does not state the reasoning for it or how the statutory vesting period

13. “Jurisdiction of writs of mandamus and prohibition (except cases whereof cognizance has been taken by the Supreme Court of Appeals or a judge thereof in vacation), shall be in the circuit court of the county in which the record or proceeding is to which the writ relates.” W. Va. Code § 53-1-2.

14. Similarly, “[w]ithin thirty days after a decision or order by the planning commission, board of subdivision and land development appeals, or board of zoning appeals, any aggrieved person may present to the circuit court of the county in which the affected premises are located, a duly verified petition for a writ of certiorari[.]” W. Va. Code § 8A-9-1.

15. Additionally, the Open Governmental Meetings Act provides a cause of action against an agency to compel compliance or to enjoin non-compliance with the Act within 120 days of the action complained of in the Circuit Court of the county where the agency regularly meets. W. Va. Code § 6-9A-6.

16. Finally, “Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.” W. Va. Code § 55-13-1. “Any person . . . whose rights, status or other legal relations are affected by a . . . ordinance . . . may have determined any question of construction or validity arising under the . . . ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder.” W. Va. Code § 55-13-2.

17. This Court has personal jurisdiction over the Commission because the Commission is located in and transacts its business within Jefferson County, West Virginia.

18. Venue is proper in this Court pursuant to W. Va. Code § 56-1-1(a) because the Commission, the real property at issue, and the City of Ranson government are all located in

and elapsed time were determined. A copy is attached as **Exhibit 2**.

Jefferson County.

FACTUAL BACKGROUND

19. The original applicant on the Project was Placemakers. Ex. 1 at 89. Its application was approved March 16, 2012.

20. Fairfax purchased the Project in an undeveloped state from the prior owner on March 13, 2018.

21. Starting in March of 2018, Fairfax pursued development. It hired Piedmont Design Group, LLC (“Piedmont”) to prepare land planning, which it worked on throughout the balance of 2018 (and which it continues to work on to this day).

22. At no point then (or any time until May 11, 2026) did the City take the position that any aspect of the then 6-year old project approvals, an approved Zoning and Land Development Plan and Plat (“LDP&P”), had expired. To the contrary, City staff told Fairfax that it needed to amend the prior LDP&P. If the 2012 approval had expired, logically the City would have informed Petitioner of that and directed it file a new LDP&P rather than seek an amendment to an expired approval.

23. In January 2019, Fairfax’s representatives met with City staff to discuss its development intentions. Again, staff did not indicate or suggest that the 2012 approval had expired. Rather, Fairfax was directed to apply for an amended LDP&P.

24. On April 29, 2019, Fairfax filed an amendment to the approved LDP&P. On July 15, 2019, the City approved Fairfax’s proposed amendment.

25. Since acquiring the Project and in pursuit of the preceding, Petitioner Fairfax has spent over \$1,500,000 on engineering, review fees, pro-rata contributions, and property transfers.

26. Despite Fairfax’s diligent and good faith efforts, moving the Project forward with

the City has been time consuming.

27. The City has been slow to respond to and at times chaotic. Delays occurred in the wake of multiple staffing changes, changes in administration, and rotation by the City of outside consultants it used. Each time new staff or a new consultant came on (or comes on), Fairfax has had to start anew in a real sense and re-explain everything to the new person, then wait for them to act (or to be replaced, and start over).

28. It took the better part of two years (April 1, 2019 to January 8, 2021) to negotiate and obtain official signatures on the DA with the City.

29. On January 8, 2021, the DA was signed. Exhibit 1 at 51.

30. Pursuant to the DA and in reliance on the City's commitment to continue to work with Fairfax to bring the Project to completion, among other things, Fairfax:

- Contributed land to the City to use for streets the City desired;
- Conveyed related stormwater management easements;
- Paid almost \$750,000 to the City.

Pursuant to the DA, Fairfax paid the City \$200,000 on November 3, 2022; \$263,000 on December 6, 2022; and, most recently, \$280,000 on January 30, 2023.

31. In turn under the DA, the City committed, among other things, to provide water and sewer to the Project; and, pledged to allow Fairfax to subdivide and finish lots adjacent to all streets Fairfax dedicated to the City:

Ranson agrees that the Owner shall have the right for any lawful purpose to access and subdivide lots adjacent to all of the streets dedicated pursuant to the Agreement, and/or have the right to add and/or access utilities as the Owner deems necessary to provide for the completion of the Fairfax Crossing development. Ranson agrees that It shall not inhibit the approval and release of building permits and use and occupancy permits for any of the lots adjacent to all of the streets dedicated pursuant to the Agreement.

Id. at 50 (emphasis supplied).

32. The DA remains in force and explicitly states that it runs with the land. It further provides that in the event of a breach, the non-breaching party can seek specific performance and/or compensatory and/or consequential damages. *Id.* at 51.

33. In the interest of brevity, Petitioner lists the following chronology of milestones and events:

<u>Milestone or Event</u>	<u>Date</u>
● Negotiate and obtain approval/signature of the initial DA	04/01/2019-01/08/2021
● Prepare, obtain approval of, and record the City street Dedications ³	04/01/2019-11/04/2022
● Prepare, obtain approval of Fairfax Boulevard plans	01/08/2021
● Provide monetary contributions required by the DA 1st payment \$200,000 2nd payment \$263,000 3rd payment \$280,000	11/3/2022 12/6/2022 1/30/2023
● File the Preliminary Plan and Construction Drawing (“PP”)	05/02/2022
● File the Final Plat for the Entire Development (“FP”) for approval.	05/11/2022
● Prepare, obtain approval of 16th Avenue plans	01/04/2023-06/03/2023
● Obtain City Staff and Consultant Review Comments on the PP	08/15/2023
● Obtain City Staff and Consultant Review Comments on the FP	1/10/2023
● Commence addressing City Staff and Consultant PP comments	08/16/2023

³Fairfax dedicated land for parts of 16th, 17th, 18th, and 19th Aves, N. Fairfax Blvd, Mare, Steed, Stallion, Destrier and Foal Streets, and Alleys 1 & 2.

- Commence addressing City Staff and Consultant FP comments 11/11/2023
- Work with City staff, City review consultants, and adjoining property owners to resolve comments on the PP and FP 08/15/2022-04/01/2026
- Negotiate/sign pump station Alternative Mainline Extension Agreement ("AMLEA") with CTUB 11/18/2022
- Negotiate water service AMLEA With West Virginia American Water 11/18/2022
- File amendment to the LDP&P in response to Staff / City Consultant PP comments 08/16/2024
- Prepare/file/obtain approval of, and record the Easements for the CTUB Pump Station 08/12/2024
- Prepare/file/obtain approval of, and record the FP for the CTUB Pump Station Parcel, remainder of Mare Street, and remainder of 16th Avenue 09/03/2024-06/05/2025
- Work with City staff, City review consultants, and adjoining property owners to resolve comments on the amended LDP&P 08/17/2024 – 05/01/2026
- Commission Hearing to Approve the Amended LDP&P 05/11/26

34. As indicated above, in addition to money and land given to the City for streets, in reliance on the City's continued processing of its application, in 2025 Petitioner dedicated land for public benefit for a CTUB pump station. As with much of what has transpired, that process took time. It began in 2022 and the deed from Petitioner dedicating the land was finally recorded (and accepted by the government) in 2025.

35. Petitioner's development remained bogged down and bottled up at the City planning staff level for years. During the time covered above, the City administration changed; there was also turnover in City planning staff; and, the City changed outside consultants it was using on the Project.

36. As indicated, in early May of 2022, Petitioner filed its Preliminary Plan and Construction Drawing (“PP”) and Final Plat for the Entire Development (“FP”). It has since sought to work with City staff and the City’s outside consultant(s) to address comments thereto and finalize the PP and FP for presentation for Commission approval. After much correspondence with the City, Petitioner was able to file revisions in August of 2024. In September of 2024, Petitioner addressed a question from then-city Planner Reilley Stanley. **Exhibit 1** at 118. Still, the City did not advance the plans to a vote.

37. By February of 2026, Ms. Reilley was no longer the City planner. (On information and belief, she is now employed in a similar capacity by Martinsburg, West Virginia.)⁴

38. On March 11, 2026, representatives of Petitioner met with the Mayor, City of Ranson staff, including Ms. Reilley’s replacement as City Planner, and an outside consultant being utilized by the City for planning at the City’s offices to discuss (1) the above described delays in the review process; (2) how to move the Project forward for the next step of approvals; and, (3) a brewing struggle between Petitioner and the owner of another related development.⁵

⁴Consistent with the turnover that has impacted Petitioner’s Project throughout, on information and belief, Ms. Reilley’s replacement, City Planner Zach Holland, has likewise already departed the City’s employment.

⁵The Lakeland Place at Fairfax Crossing project being developed by Petitioner is part of a broader development in the Fairfax Crossing area all of which was previously held by unified ownership. However, at some point, parts of the original project were sold to new owners (including Petitioner’s). As a result of such changes in ownership, certain storm water facilities that service Petitioner’s part of the Project are now located on land it does not own. In turn, by March of 2026, that situation had led to a dispute between Petitioner and the owner of another part of the original development.

In connection with the larger Fairfax Crossing development, plats and plans had long since been previously filed, approved, and recorded that set forth storm water management plans serving all parts of that project (as well as facilities owned by the City). Petitioner has relied on those plans for some time – as has the City. Indeed, both the City and end-user owners in

The meeting was positive and went smoothly (and did not appear at all contentious).

39. At the March 11 meeting, the City officials present indicated that staff (and the City's outside consultant) would work with Petitioner's development consultant, Piedmont, to finalize these submissions for public comment. The Mayor and City staffers present expressed a desire to see Petitioner's Project move forward. The City indicated it would prioritize working through any issues and would swiftly act on submissions by Petitioner to that end. It was discussed that the parties would work in the near term to address and ready for public comment and Commission approval of Petitioner's submissions seeking what should have been relatively minor adjustments to the Project. Petitioner had been seeking to get these adjustments resolved and presented for Commission approval (and public comment) for some time.

40. At no point before, during, or after the March 11, 2026 meeting did the City communicate to Petitioner – or even suggest – that Petitioner's development approval had expired.

41. Following the March 11 meeting, the submissions discussed there were readied for presentation to the Commission. This led staff to place two items on the agenda for the Commission's May 11, 2026 meeting (respectively as items 7 and 8 on the agenda). *See Exhibit 1* at 2 (items 7 and 8). First,

Public Hearing - accepting public comments for the Land Development Plan and Plat for the proposed Lakeland Place at Fairfax Crossing revision. 36.44-acre accessible from Fairfax Boulevard, North and South, along with potential future access from 16th Avenue. Parcel ID 19-08-0008-0001-0002.

Exhibit 1 at 2 (Agenda item 7). Second,

Petitioner's portion of the Project utilize those facilities. Further, the other owner has sought to take away Petitioner's access to the commercial property within the Project (which commercial lots the other owner has sought to purchase from Petitioner for a pittance).

Consideration - 24-37-LDPP- Land Development Plan and Plat for Lakeland Place at Fairfax Crossing revision. 36.44-acre accessible from Fairfax Boulevard, North and South, along with potential future access from 16th Avenue. Parcel ID 19-08-0008-0001-0002.

Exhibit 1 at 2 (Agenda item 8).

42. Legal notice of what the Commission proposed to consider in this regard at its then upcoming May 11, 2026 was published, stating as follows:

**LEGAL NOTICE
PUBLIC HEARING NOTICE
CITY OF RANSON**

The Ranson Planning Commission will hold a public hearing on May 11, 2026 at 7:00 pm at Ranson City Hall, 312 S. Mildred Street, Ranson, WV. The purpose of the public hearing is to accept public comments on the Land Development Plan and Plat for the proposed Lakeland Place at Fairfax Crossing revision. 36.44-acre accessible from Fairfax Boulevard, North and South, along with potential future access from 16th Avenue. Parcel ID 19-08-0008-0001-0002. Copies of the proposed Land Development Plan and Plat are available during regular office hours of 8:00 am – 4:00 pm weekdays, excluding holidays, at City Hall. All persons are invited to attend and make comments about the proposed Land Development Plan and Plat. If you cannot attend but wish to comment, you may write to the following address prior to May 8, 2026: City of Ranson, Attn: Community Development Department, 312 S. Mildred Street, Ranson, WV 25438 or email cityclerk@ransonwv.us. Written comments received prior to May 8, 2026, will be provided to the Planning Commission and inserted into the official record.

Exhibit 1 at 44.

43. As noticed for the May 11, 2026 Commission meeting (the “Commission Meeting”), Agenda items 7 and 8 were noticed as simply being a forum to allow public comment on the proposed revisions to Petitioner’s plans. The foregoing did not give Petitioner notice that the Commission would vote on effectively declaring Petitioner’s plan void as expired, rather than simply take public comments on the “revision”.

44. At the Commission Meeting, Petitioner was not permitted to make a presentation in support of its proposals nor was it permitted to speak in rebuttal to the notion that its LDP&P was somehow expired. Rather than take public comment on whether to approve, disapprove, or make modifications to the requested revisions as had been noticed, the Commission determined to vote on whether the approved LDP&P for Lakeland Place at Fairfax Crossing had expired. It then proceeded to declare the LDP&P to be expired.

45. Respondents have not provided a statement of their reasons for declaring Petitioner's LDP&P "expired", despite the Commission's legal obligation to provide one – and despite Petitioner's request to be given such written notice. However, the Commission's determination appears to be based on a misconstruction and/or misapplication of Section 8A-5-12(c) of the West Virginia Code, which provides: "the vesting period for an approved land development plan and plat which creates the vested property right is five years from the approval of the land development plan and plat by the planning commission."

46. Respondents misread Section 8A-5-12(c) of the West Virginia Code as providing that LDP&P approvals are subject to an absolute and immutable time limit of five (5) years. On information and belief, the Commission has not previously taken the position that 8A-5-12 operates thusly; nor has it previously invoked that subsection to terminate an approved LDP&P.

47. Further, the Commission ignored key provisions in Section 8A-5-12 intended to protect applicants who actively work in good faith on their development projects. Sections 8A-5-12(d) and (e) provide that so long as an applicant diligently pursues their development, their rights are maintained and cannot be taken without compensation:

(d) Without limiting the time when rights might otherwise vest, a landowner's rights vest in a land use or development plan and cannot be affected by a subsequent amendment to a zoning ordinance or action by the planning

commission when the landowner:

- (1) Obtains or is the beneficiary of a significant affirmative governmental act which remains in effect allowing development of a specific project;
- (2) Relies in good faith on the significant affirmative governmental act; and
- (3) Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.

(e) A vested right is a property right, which cannot be taken without compensation. A court may award damages against the local government in favor of the landowner for monetary losses incurred by the landowner and court costs and attorneys' fees resulting from the local government's bad faith refusal to recognize that the landowner has obtained vested rights.

W.Va. Code §8A-5-12.

48. The City of Ranson Code of Ordinance (the "City Code"), Chapter 19A, Article 1, Division 1.3, Section 1.3.1, and Article 5, Section 5.1.3 as delegated to Chapter 16, Article II, Division 4, likewise do not support the Commission's determination that the approved LDP&P has expired.

49. The determination that the Project's LDP&P has expired is inconsistent with the express provisions of Chapter 19A of the City Code.

50. The Project was originally submitted and approved pursuant to Chapter 19A, Sections 1.3.4 and 3.1.4 as a combined rezoning and LDP&P application. Consistent with Chapter 19A, Sections 3.1.4(b) and (c), Petitioner subsequently proceeded through the Preliminary Plan/Construction Drawing ("PP") and Final Plat ("FP") approval process for the entire development, including approvals under Chapter 19A, Sections 5.1.5 and 5.1.8 in reliance on the LDP&P approval.

51. Chapter 19A, Section 1.3.7 of the City code provides that approvals granted

pursuant to the combined rezoning and LDP&P process become "frozen" upon satisfaction of the requirements established by the City Code. Petitioner obtained approval of the most recent FP, and that FP was subsequently recorded following the Commission approval. Upon approval and recordation of the FP, the rights associated with the approved rezoning and LDP&P became vested and "frozen" pursuant to Chapter 19A, Section 1.3.7 of the City Code. Accordingly, the City may not now retroactively determine that the underlying LDP&P has expired when the City Code expressly provides for the freezing of approved development rights following FP approval and recordation. Any interpretation that allows an approved and recorded FP to coexist with an expired LDP&P would render the protections afforded by Chapter 19A, Section 1.3.7 of the City Code meaningless and would undermine the certainty and predictability that Chapter 19A was enacted to provide.

52. In addition, the City's administration of this Project has not complied with the expeditious review process called for by Chapter 19A, Section 1.6.1(a). That section establishes incentives and procedures intended to facilitate prompt review and approval of qualifying development applications. Despite those provisions, the Petitioner experienced substantial delays throughout the entitlement and approval process.

53. Numerous projects that entered the City's review process after Petitioner's Project have advanced through review and obtained approvals ahead of Petitioner's Project. To allow delays attributable to City review and processing to serve as the basis for declaring the Project and LDP&P expired would be inequitable and contrary to both the purpose and intent of Chapter 19A of the City Code. The approved Project has been the subject of multiple reviews, revisions, and approvals by the City.

54. Public notices issued by the City demonstrate that the Commission has continued

to recognize and process revisions to the LDP&P for this Project, reflecting the City's ongoing administrative oversight and jurisdiction over the approved development of the Project.

Furthermore, City records and the DA concerning approved LDP&P's indicate that approved plans may be revised, amended, and administered through subsequent Commission actions.

Petitioner diligently pursued all required approvals, including preparation of and processing of the approvals for the PPs and FPs (at considerable expense) as required by the City Code, and relied upon those approvals in continuing the development process for the Project.

55. Any lapse in timing was significantly influenced by City handling of the review procedures and actions beyond the Petitioner's control. Furthermore, due to the continuous turnover of City personnel and change of external City consultants, the Petitioner experienced multiple periods of lack of progress for the Project review and was forced to revisit issues on an ongoing basis, furthering delaying the Project.

56. The determination that the approval for the Project has expired is inconsistent with both the history of the Project and the intent of Chapter 19A of the City Code. Chapter 19A and its complimentary delegation of certain provisions to Chapter 16 that establish a comprehensive framework governing subdivision approval, LDP&P's, PP, FP, DA, and the administration of approved developments. The City Code is intended to and must be construed in a manner that promotes orderly development, protects vested rights created through approved plans, and provides predictability and fairness to property owners and developers who have relied upon Commission approvals.

57. The City's own records demonstrate that an approved LDP&P remains subject to subsequent revisions and approvals by the Commission. The DA approved by the City expressly contemplates a revised LDP&P and recognizes the continuing legal effect of such LDP&P and

agreement.

58. As facts outlined herein above establish, Petitioner has obtained and is the beneficiary of significant affirmative government actions; has relied in good faith on significant governmental acts; and has incurred both extensive obligations and substantial expenses in its diligent pursuit of the specific Project in reliance on significant affirmative governmental acts, within the meaning of Section 8A-5-12 of the West Virginia Code, quoted above. Each of the following vested and re-vested Petitioner's rights arising from the Project, as follows:

- a. Approved LDP&P;
- b. DA;
- c. PP and FP submissions;
- d. The recording of the first FP;
- e. In-kind land contributions or monies expended by and/or contributed by the

Applicant including:

- (i) Contribution of its Pro-rata share for Fairfax Boulevard construction to the City;
- (ii) Dedication of land for public rights-of-way to the City;
- (iii) Contribution of its Pro-rata share for sewage pumping station construction to the CTUB, which benefits the City and supports its planned expansion both within and beyond the Project; and
- (iv) Transfer of Property and easements to the City and CTUB.

Each of these items constitutes a governmental act and/or demonstrates Petitioner's substantial reliance thereon, sufficient to vest rights and extend the duration and effect of the approved LDP&P.

59. Moreover, in addition to affirmative land dedications and monies paid out to, on behalf of, or for the benefit of the City, Petitioner has incurred substantial expenses in pursuing development of the Project. It has spent hundreds of thousands on development work, planning consultants and other professionals, and carrying out development-related construction work. And, of course, its members have invested substantial time and effort to further its development of the Project.

60. Delays caused or attributable to the City, coupled with its declaration that the LDP&P is expired, constitute a breach and violation of the DA, pursuant to which the City committed to process the Project and allow subdivision of lots.

61. Petitioner's Project is comprised of and includes numerous lots (or land to be subdivided into lots for sale) that adjoin the roads dedicated by it to the City pursuant to the DA. In the DA, and in return for land dedicated to the City by Petitioner and a \$743,000 payment from Petitioner, the City committed that Petitioner "shall have the right [to] subdivide lots adjacent to all of the streets dedicated pursuant to the Agreement", is entitled to access to "utilities" as necessary "for the completion of the Fairfax Crossing development." **Exhibit 1** at 49-50 (pages 3-4 of the DA). The City further explicitly agreed that it would not "inhibit the approval and release of building permits and use and occupancy permits for any of the lots adjacent to all of the streets dedicated pursuant to the Agreement." *Id.*

62. By delaying the approvals Petitioner needed to subdivide its lots, the City materially breached the DA. By declaring the LDP&P expired based on delay attributable to the City, the City breached the DA. The City's conduct constitutes prevention within the meaning of the prevention doctrine, insofar as it has prevented Petitioner from the benefit of the DA, which is itself a further breach of that agreement.

63. Having entered into the DA and accepting money and land for City streets from Petitioner – and having secured a dedication of land for a pump station needed to support City expansion in 2025 -- the City apparently seeks to effect a “pocket veto” of Petitioner’s Project. This it cannot do as matters of Constitutional due process under the state and federal constitutions, state statute, city code, contract, and equity.

COUNT I: WRIT OF PROHIBITION

64. Petitioner incorporates by reference the allegations of the preceding paragraphs as if the same were fully set forth and incorporated herein.

65. “A writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject matter in controversy, or, having such jurisdiction exceeds its legitimate powers.” *Syl. Pt. 1, State ex rel. Brum v. Bradley*, 214 W. Va. 493, 495, 590 S.E.2d 686, 688 (2003) (quoting *Syl. Pt. 1, State ex rel. UMWA International Union v. Maynard*, 176 W. Va. 131, 342 S.E.2d 96 (1985)).

66. Here, the Commission lacked any authority to declare Fairfax’s Project expired at the Commission Meeting. Its only authority, and indeed its obligation, was to accept public comment on Fairfax’s proposed revision, as noticed.

67. There was no lawful basis for the Commission’s decision to declare the LDP&P expired at the Commission Meeting.

68. Accordingly, Fairfax asks that the Court issue a writ of prohibition vacating the Commission’s unlawful declaration of Fairfax’s LDP&P and order Respondents to resume processing the Project as and in the manner required of a project in which an applicant has vested rights.

COUNT II: WRIT OF MANDAMUS

69. Petitioner incorporates by reference the allegations of the preceding paragraphs as if the same were fully set forth and incorporated herein.

70. “The purpose of mandamus is to compel one to perform a legal duty imposed by law[.]” *State ex rel. Bd. of Educ. v. Johnson*, 156 W. Va. 39, 43, 190 S.E.2d 483, 486 (1972).

“Mandamus is a proper remedy to compel tribunals and officers exercising discretionary and judicial powers to act, when they refuse so to do, in violation of their duty[.]” Syl. Pt. 2, in part, *State ex rel. W. Va. Dep't of Health & Human Res. v. Bloom*, 247 W. Va. 433, 436, 880 S.E.2d 899, 902 (2022) (quoting Syl. Pt. 2, *State ex rel. Lambert v. Cortellessi*, 182 W. Va. 142, 386 S.E.2d 640 (1989)).

71. Fairfax has a clear interest in the expedient and lawful approval of its Project and interim necessary approvals therefor; and, the Commission’s failure to process the proposed revisions and declaration that the LDP&P is expired has impaired Fairfax’s interest and violated its clear legal right to the lawful and orderly processing of its application.

72. By statute and pursuant to its notice, the Commission was required to accept public comment on Fairfax’s proposed revisions and was not permitted to vote on a matter not noticed. Both because the Commission declared the LDP&P expired without legal basis and because it thereby went well outside the scope of notice of what was before it, it exceeded its authority and its actions were *ultra vires*, illegal, arbitrary and capricious.

73. Petitioner has no other adequate remedy at law by which to compel the Commission to reinstate its LDP&P and process it as required by State statute and the City Code.

74. Accordingly, Fairfax asks that the Court issue a writ of mandamus to compel the Commission to recognize the LDP&P has not expired and to process Fairfax’s proposed

revisions as required by State statute and the City Code.

75. By law, following its declaration of the LDP&P being expired, the Commission was required to issue written notice to Petitioner of its decision and a statement of reasons for it. The Commission Meeting was almost 30 days ago, but the Commission has failed to issue such written notice that includes a statement of reasons in it – despite Petitioner’s express request for the required written notice.

76. Accordingly, Fairfax further asks that the Court vacate the Commission’s declaration of the LDP&P as expired and issue a writ of mandamus to compel the Commission to recognize the LDP&P has not expired and to process Fairfax’s proposed revisions as required by State statute and the City Code.

77. Given the Commission’s disregard of Petitioner’s vested rights (and the scope of its own meeting notice) and its statutory and constitutional rights to notice and an opportunity to be heard before deprivation of its vested property interest at the Commission Meeting, the Commissions’ actions in declaring Petitioner’s LDP&P expired were deliberately and knowingly carried out in dereliction of its clear legal duty.

78. Given the Commission’s disregard after the Commission Meeting of Petitioner’s statutory (and constitutional) right to written notice of the Commission’s decision and reasons therefor, the Commission deliberately and knowingly acted in dereliction of its clear legal duty.

79. Given the Commission’s disregard at the Commission Meeting of Fairfax’s vested rights (and the scope of its own meeting notice) at the Commission Meeting, the Commissions’ actions in declaring Petitioner’s LDP&P expired were deliberately and knowingly carried out in dereliction of its clear legal duty.

80. “Where a public official has deliberately and knowingly refused to exercise a

clear legal duty, a presumption exists in favor of an award of attorney's fees; unless extraordinary circumstances indicate an award would be inappropriate, attorney's fees will be allowed." Syl. Pt. 3, *State ex rel. W. Virginia Highlands Conservancy, Inc. v. W. Virginia Div. of Env't Prot.*, 193 W. Va. 650, 651, 458 S.E.2d 88, 89 (1995).

81. Accordingly, Fairfax also asks this Court to award it attorney's fees it has incurred in bringing this action.

COUNT III: WRIT OF CERTIORARI

82. Petitioner incorporates by reference the allegations of the preceding paragraphs as if the same were fully set forth and incorporated herein.

83. Pursuant to W. Va. Code § 8A-9-1, "[e]very decision or order of the planning commission . . . is subject to review by certiorari" and "within thirty days after a decision or order by the planning commission . . . any aggrieved person may present to the circuit court of the county in which the affected premises are located, a duly verified petition for a writ of certiorari[.]"

84. As explained above, the Commission's decision to declare Fairfax's LDP&P expired was illegal because it is directly contrary to both State statute and the City Code. It is further illegal because it exceeded the scope of the notice the Commission itself published as to the Agenda of matters to be considered.

85. Based on the foregoing, Fairfax asks that this Court vacate the Commission's illegal declaration of the LDP&P as expired and order the Commission to resume processing revisions based on Fairfax's rights being vested and unexpired as required by applicable law.

COUNT IV: VIOLATION OF WEST VIRGINIA OPEN GOVERNMENT MEETINGS ACT

86. Petitioner incorporates by reference the allegations of the preceding paragraphs as if the same were fully set forth and incorporated herein.

87. The Open Governmental Meetings Act (“OGMA”) requires governing bodies of State and County agencies to provide for prior notice of the “date, time, place and agenda of all regularly scheduled meetings.” See W. Va. Code § 6-9A-3(d).

88. Here, the agenda for the Commission’s meeting of May 11, 2026 notified the public that the Commission would be accepting comments on revisions to Fairfax’s LDP&P. See **Exhibit 1** at 44. The notice did not indicate that the Commission would do anything more than take public comment on the proposed revisions.

89. Because the Commission’s agenda notice only stated that public comment would be taken, the agenda did not adequately advise the public that the Commission might take action to declare Fairfax’s LDP&P expired. See *Capriotti v. Jefferson Cnty. Plan. Comm’n*, No. 13-1243, 2015 W. Va. LEXIS 134, 2015 WL 869318, at *6 (W. Va. Feb. 26, 2015) (memorandum decision) (holding that planning commissions’ agenda notices must contain more than generic references to adequately inform the public of the specific items to be considered).

90. The OGMA provides that anyone aggrieved by a violation of the Act may bring an action against a violating public agency in the County in which the public agency regularly meets within 120 days of the violation. W. Va. Code § 6-9A-6. The Court is empowered “to compel compliance or enjoin noncompliance and to annul a decision made in violation of [the OGMA].” *Id.*

91. The Circuit Court is authorized to grant attorney’s fees in a successful action to enforce the OGMA “unless the Court finds that the position of the public agency was substantially justified or that special circumstances make an award of fees and other expenses

unjust.” W. Va. Code § 6-9A-7(b).

92. Accordingly, Fairfax asks that this Court annul the Commission’s declaration that its LDP&P is expired because that issue was not properly noticed on the agenda for the May 11, 2026 meeting and its consideration by the Commission therefore violated the OGMA.

93. Fairfax also asks this Court to award it attorney’s fees incurred by this action.

COUNT V: DECLARATORY JUDGMENT

94. Petitioner incorporates by reference the allegations of the preceding paragraphs as if the same were fully set forth and incorporated herein.

95. Pursuant to West Virginia’s Uniform Declaratory Judgment Act, W. Va. Code § 55-13-1 et. seq., “[a]ny person . . . whose rights, status or other legal relations are affected by a . . . ordinance . . . may have determined any question of construction or validity arising under the . . . ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder.” W. Va. Code § 55-13-2.

96. Section 10 of the Uniform Declaratory Judgment Act provides that “the court may make such award of costs as may seem equitable and just.” W. Va. Code § 55-13-10.

97. As explained above, Petitioner’s rights in the Project remain vested and the Commission had no basis or authority at the Commission Meeting to make a surprise determination that Fairfax’s LDP&P is expired.

98. Accordingly, Fairfax asks that this Court annul the Commission’s declaration that its LDP&P is expired because that issue was not properly noticed on the agenda for the May 11, 2026 meeting and its consideration by the Commission therefore violated the OGMA.

99. Fairfax also asks this Court to award it attorney’s fees incurred by this

action.

COUNT VI: VIOLATION OF DUE PROCESS

100. Petitioner incorporates by reference the allegations of the preceding paragraphs as if the same were fully set forth and incorporated herein.

101. Petitioner has a vested interest in the Project and property rights therein.

102. As alleged above, Respondents' actions deprived Petitioner of notice and an opportunity to be heard concerning its LDP&P and the purported expiration thereof.

Respondents' published notice gave no indication that that was to be voted on at the Commission Meeting. Likewise, no communication from Respondents to Petitioner gave notice that such was to be considered by the Commission at that meeting.

103. Respondents' actions in declaring the LDP&P expired were arbitrary and capricious, illegal, and *ultra vires*.

104. On information and belief, the Commission's declaration of the LDP&P as expired is contrary to how the Commission has construed and applied vesting laws and rules in the past as to other applications and contrary to how it is treating other similarly situated applicants with projects currently pending before it.

105. Unless vacated, Respondents' above-alleged actions constitute a taking without just compensation.

106. Accordingly, Fairfax asks that this Court annul the Commission's declaration that its LDP&P is expired because that issue was not properly noticed on the agenda for the May 11, 2026 meeting and its consideration by the Commission therefore violated the OGMA.

107. Fairfax also asks this Court to award it attorney's fees incurred by this action.

COUNT VII: BREACH OF CONTRACT

108. Petitioner incorporates by reference the allegations of the preceding paragraphs as if the same were fully set forth and incorporated herein.

109. As alleged above, the Commission's declaration of the LDP&P as expired and the City's conduct leading thereto constitute a material breach of the DA.

110. By delaying and failing to process Petitioner's application and approvals in a timely manner, the City materially breached Section 8 of the DA.

111. Under the circumstances alleged herein above, the City's declaration of the LDP&P as expired is likewise a material breach of the same section.

112. The DA provides that in the event of a breach, the non-breaching party may seek Specific Performance. The Project involves real estate. Petitioner has no adequate remedy at law.

113. Accordingly, Fairfax asks that this Court annul the Commission's declaration that its LDP&P is expired because such a determination is a breach of Section 8 of the DA; and, because even if the LDP&P somehow were expired, which it has not, any such expiration would be a direct result of delays caused by the City's failure to timely and properly process Fairfax's revisions and related applications, absent which the Project would have been completed without such lapse.

114. In the alternative, to the prayer for specific performance, Petitioner alleges that the termination of its development Project will cause it to lose the value of its Project, and thereby be damaged in an amount it otherwise would pray for damages for breach of contract in the amount of eleven million dollars (\$11,000,000) in compensatory and/or consequential damages, or such other amount as may be proven at trial.

WHEREFORE, Petitioner Fairfax Crossing Real Estate, LLC prays that this Court vacate

the Planning Commission's unlawful declaration that its LDP&P is expired and order the Planning Commission to process the request for approval of revisions as required by applicable law. Fairfax further requests that it be awarded its reasonable costs, expenses, and attorney's fees incurred in litigating this matter.

JURY DEMAND

PETITIONER DEMANDS A JURY TRIAL ON ALL THE ISSUES SO TRIABLE.

Dated: June 10, 2026

Fairfax Crossing Real Estate, LLC

By Counsel

/s/Tracie L. Clabaugh

Tracie L. Clabaugh (WSBV Bar #14545)

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*Counsel for Petitioner Fairfax
Crossing Real Estate, LLC*

VERIFICATION

STATE OF Maryland

COUNTY OF Frederick, to wit:

I, Edward D Scott, a manager of Fairfax Crossing Real Estate, LLC, being first duly sworn, state that I have read the foregoing Complaint and Verified Petition and that the factual representations contained therein are true and accurate to the best of my information, belief, and knowledge.



Taken, subscribed, and sworn before me this 9th day of June, 2026.

My commission expires: 2/27/2029

Lori E Standifer
Notary Public

